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THE RIGHT TO WORK

A SERIES OF ADDRESSES AND PAPERS PRESENTED AT THE SEMI-ANNUAL MEETING OF THE ACADEMY OF POLITICAL SCIENCE
APRIL 21, 1954

EDITED BY
DUMAS MALONE

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PREFACE

MAN'S right to work is as incontestable as his other historic rights—such as freedom of speech and religion—but in our day of highly organized business, labor, and government this has become a more controversial subject than the Fathers of the Republic could have imagined. They largely took this right for granted and identified it with economic opportunity. In our own time it is related to such questions as the open shop and closed shop, and laws bearing on the status and powers of organized labor. It was manifestly impossible in the sessions of a single day to consider all the ramifications of this complicated subject, but the speakers at the Spring Meeting of the Academy of Political Science entered into many of them. Quite obviously there was no complete unanimity of opinion as a result of the discussion, but we believe that these papers and informal remarks will be stimulating to the readers of these PROCEEDINGS as they were to the auditors at the meeting.

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PART I

THE RIGHT TO WORK

INTRODUCTION

AARON W. WARNER, *Presiding*
Department of Economics, School of General Studies, Columbia University

GOOD morning! It is a privilege and a pleasure to open the Spring Meeting of the 74th year of the Academy of Political Science, and to welcome our speakers and guests.

The morning session is devoted to a discussion of one of the more pressing labor issues of our time, the right to work. It is hoped there will be time for discussion from the floor following the more formal talks from the platform.

The significance of our topic merits some comment. Few subjects are more provocative of keen interest and sharp debate. In a world in which concentration of authority and power in the hands of a few has unfortunately become the hallmark of so many of our important institutions, the problem of preserving individual values and personal freedom has come to the fore as one of our most vexatious and pressing issues.

Today's topic is placed in that setting. No freedom is more urgent under conditions where the vast majority of the population depend upon jobs for a livelihood, than that of the chance to earn a living. Public policy in this country must increasingly concern itself with various aspects of this problem. Any abridgment or interference with the opportunity to work is indeed a serious matter. At the same time, there are historical, institutional, economic and social reasons for according to trade unions a considerable degree of autonomous control over the area of the employment relationship. Although these are not necessarily

conflicting concepts, areas of conflict are bound to arise out of the situation involving the rights of the group versus the rights of the individual. This is particularly true where unions seek to gain the closed or the union shop as a means of strengthening their position.

Since our speakers are limiting their remarks to the American scene, it may be well to point out that the issue is not limited to these shores. The claim to the right to control the job opportunity is equally present, for example, among the trade unions of Great Britain.

I take the liberty to quote a single passage from a recent report of the British Trades Union Congress, which is the official central union body in Britain, on the attitude of the British trade-union movement toward the unorganized worker or, as he is called in the report, the non-unionist.

The report states:

> . . . the position of the non-unionist cannot be justified either on grounds of principle or of expediency. The liberty of the individual is not an absolute and unqualified right. It is subject to restrictions for social ends. . . . stability, order and regularity in the conduct of industry depend upon the proper functioning of trade unions, and upon recognition of the fact that no man or woman is entitled to benefit from the work of trade unions without acceptance of the obligations of trade union membership. . . . recognition of such obligations is incumbent not only upon individual workers, but upon managements and employers.[1]

It is this proposition which is being questioned today. As is customary at these sessions, the speakers are distinguished and are drawn from different walks of life. All share a common interest, however, in the problems of industrial relations.

As I consider the different points of view that are representative, I am perforce reminded of an old Florentine proverb which I recently ran across in reading about the Italian trade-union movement. "If you meet one Italian," the proverb says. "you have an artist. If you meet two, you have an orchestra. If you meet three, you have confusion." Our situation may be even worse, since as you see, we have not three experts but four experts!

[1] British Trades Union Congress, *The Closed Shop*, February 1947.

Our first speaker is Professor Neil W. Chamberlain, of the Department of Economics of Yale University, and Assistant Director of the Labor and Management Center of that University. Professor Chamberlain is well known for the excellence of his writings in the labor-management field, and is the author of a number of books on labor economics, industrial relations and collective bargaining. He will speak to you on "Problems of Union Security". It is my great pleasure to introduce Professor Chamberlain!

THE PROBLEM OF UNION SECURITY

NEIL W. CHAMBERLAIN
Associate Professor of Economics, Yale University

I SHOULD like to spend the few minutes we have together this morning to analyze with you the problem of union security. This is the problem that most of us refer to under one of its several labels—the closed shop, the union shop, maintenance-of-membership. In all its forms it has one element in common—compulsory union membership. I hope that you will regard the ideas which I shall present, not as settled convictions which I wish to argue, but as propositions offered for your consideration. I am not advocating a particular solution but suggesting a few ideas as a basis for further reflection.

We can, I think, begin by assuming the acceptance in our society of collective bargaining, not only its legal acceptance in the Wagner and Taft-Hartley Acts but also its public acceptance, as evidenced by numerous public opinion polls. I assume that the philosophical basis for this acceptance lies in the principle, congenial to our society, that the governed shall participate in the government. The union gives workers a say in the conditions under which they work. It is this philosophy of the right of representation that gives ethical ground for the state's protecting—in the words of the National Labor Relations Act, as amended by the Taft-Hartley Law—"the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment."

This right of representation has been embodied in national legislation which has been interpreted by the National Labor Relations Board over a period of almost two decades. There are two provisions of the Act administered by the NLRB which are relevant to the problem we are discussing today. I should like to emphasize, however, that these two provisions owe their importance less to the fact that they are incorporated in legislation than to the fact that they are an almost inescapable accompaniment of collective bargaining itself.

Section 9 (a) of the Labor Act states: "Representatives

designated or selected for the purposes of collective bargaining by the majority of employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such a unit. . . ." The two aspects of this clause which I should like to stress are, first, the recognition of *exclusive* representation rights to the majority representative, and, second, the fact that the union so recognized becomes the representative of *all* employees, whether or not any opposed it and even continue to oppose it. It is the possible implications of these two provisions that I should like to examine this morning.

The doctrine of exclusive majority representation was established only after painful experience with multiple and proportional representation in the days before the Wagner Act. Employers made vigorous attack upon the doctrine of exclusive representation, charging that such a system conferred a "labor monopoly" and denied minority groups their own right of representation. Nevertheless, with some deviation and backtracking, fairly early in the administration of the NRA labor program the principle was laid down that minority representation would defeat collective bargaining, since it would prevent the negotiation of any *general* conditions of employment. It was apparent that two systems of seniority could not function simultaneously in the same unit; a minority union could not enjoy a system of plant-wide seniority at the same time that a majority union insisted upon departmental seniority. A system of promotion based on seniority, advanced by one union, could not function in the face of a system of promotion based on ability, advocated by a second union. Most fundamentally, two levels of wage rates could not exist side by side in the same unit; the stronger union would always be bound by the weaker union, just as a union which bargained for members only would be largely restricted to the terms which nonunion employees were willing to accept.

If multiple—that is, members only—representation was not feasible, this still left open the possibility of proportional representation, and the automobile industry became the guinea pig for this experiment, under a special NRA board. The idea was that if there were several unions claiming to represent some portion of the total employee group, then each union should be represented on the employees' committee pro rata to the number

of employees it had as members. This presumably left it to the various union representatives to reach some agreement among themselves as to the terms of any proposal which they would jointly make to the company. As Louis Stark, labor reporter for the *New York Times*, wrote of this decision, "This would bring in American Federation of Labor unions, company unions, rump unions, dissident factions of the A. F. of L., and even left wing Communist unions." The possibility of such diverse groups resolving disagreements among themselves within some kind of works council, as was contemplated, so as to permit the negotiation of general conditions applying to all employees, was never actually put to the test, however. The A. F. L. became sufficiently dissatisfied with the prospect to withdraw from the arrangement, which had been originally proposed by the president. Proportional representation has not seriously been tried since then.

On the basis of such experience, I think it is fair to conclude that there is substantial agreement among both students and practitioners that exclusive majority representation is necessary for workable collective bargaining. That principle was incorporated into the Wagner Act in 1935, and although challenged from time to time has not seriously been threatened. Indeed, its meaning and significance has been spelled out in a number of Board and Court decisions, of which one of the most important was the J. I. Case decision of 1944 in which Justice Jackson made these emphatic assertions:

> . . . The very purpose of providing by statute for the collective agreement is to supersede the terms of separate agreements of employees with terms which reflect the strength and bargaining power and serve the welfare of the group. . . .
>
> But it is urged that some employees may lose by the collective agreement, that an individual workman may sometimes have, or be capable of getting, better terms than those obtainable by the group and that his freedom of contract must be respected on that account. . . . The practice and philosophy of collective bargaining looks with suspicion on such individual advantages. Of course, where there is a great variation in circumstances of employment or capacity of employees, it is possible for the collective bargain to prescribe only minimum rates or maximum hours or expressly to leave certain areas open to individual bargaining. But except as so provided, advantages to individuals may prove as disruptive of industrial peace as

> disadvantages. They are a fruitful way of interfering with organization and choice of representatives; increased compensation, if individually deserved, is often earned at the cost of breaking down some other standard thought to be for the welfare of the group, and always creates the suspicion of being paid at the long-range expense of the group as a whole. . . . The workman is free, if he values his own bargaining position more than that of the group, to vote against representation; but the majority rules, and if it collectivizes the employment bargain, individual advantages or favors will generally in practice go in as a contribution to the collective result.

It should be noted that this principle of exclusive majority representation does not rely on compulsory union membership. As long as a majority of workers in an appropriate bargaining unit designate the union as their representative, the union falls heir to the right of exclusive representation, even though a substantial minority of workers in the unit remain outside the union.

If we have thus tended to accept the principle of exclusive majority representation as necessary to collective bargaining, we should recognize that we have not pushed this principle to any logical conclusion but have, on the contrary, limited its application. It is not true that in all phases of the bargaining relationship the majority rules, and that minorities and individuals must accept its decision. The principle of exclusive representatation ceases to be binding as soon as a union calls a strike. Prior to a strike, no individual employee is permitted to accept terms not approved by the union which represents the majority. This is the situation of which Justice Jackson wrote so eloquently, in which individual employees are precluded from making separate terms with the employer, however much such terms may be to their advantage. But when a strike is called, which in the absence of contrary proof we must assume to be an act of the majority, this majority decision is not binding on the individual employee. He may, if he chooses, cross the picket line of his fellows and accept employment on management's terms. That no collective agreement is then in force does not lessen the fact that in so doing he is acting contrary to the principle of exclusive majority representation; he is making his own bargain, on terms which the majority have rejected as unacceptable. In so doing he is denying the exclusive representation of the union and is assuming the right to act as an individual.

The common explanation for this state of affairs is that, with

the strike, collective bargaining has broken down. But this is scarcely an accurate description of the situation, unless we are prepared to rule out the strike as an instrument of collective bargaining. Certainly, the NLRB has been consistent in its assertion that the employer's duty to bargain collectively with the majority representative continues as long as a strike is current. If collective bargaining can be said to have broken down at all, it is only because the principle of exclusive majority representation has broken down. If that principle were maintained, there could be no back-to-work movement, no trickling of employees back to their jobs on the employer's terms, contrary to the majority decision to remain on strike. If the principle of exclusive majority representation were held to, the employees would strike as a body and return to work as a body, in line with whatever decision was made through their exclusive representative agent. And the fact that certain individuals may be injured by the majority's action would be no more controlling than it is in the negotiation of a collective agreement, when the securing of any individual advantage is regarded as secondary to the serving of the welfare of the group. As in the negotiation of the agreement, so in the conduct of the strike as part of such negotiations would it be entirely feasible to apply the principle of exclusive majority representation.

Now the point to which I am leading is simply this: Historically, the main reason for which unions have sought the closed shop has been to enforce the principle of exclusive representation. If we look back over the 150 years or so of union history in this country, it becomes abundantly clear that the closed shop has been a prime objective of unions not because of any desire to accumulate power for its own sake or to subject individual workers to some autocracy of union leadership. The closed shop has been the union's goal chiefly because it was the only available instrument for enforcing the principle of exclusive majority decision, without which collective bargaining was unworkable. If union membership could be made a condition of employment, then any action by individuals which subverted the collective welfare could be made the basis for loss of union membership and along with it loss of employment. The individual's own advantage could thus be coercively subordinated to the welfare of the group.

With the advent of the National Labor Relations Act providing for employee elections to determine the bargaining agent which was then accorded exclusive representation rights in contract negotiations, some of the urgency for the closed shop disappeared. Another instrument has been provided by which the interests of the individual could be subordinated to the interests of the group, by introducing the practice of majority rule. Without this practice any union gains would have been at the mercy of the weakest members of the group. But, as we have seen, the principle of exclusive majority representation was limited; it applied only up to the point of the strike. As soon as a majority called a strike, the individual was freed from its exclusive control and permitted to exercise his independent judgment as to whether or not to accept the employer's terms. In so doing he subjected group interest to personal interest. Exclusive majority representation went out the window.

Under the circumstances the unions might well have been expected to continue to press, as they have, for compulsory union membership, since they were thereby provided with disciplinary powers over those employees whose economic exigency or lack of sympathy might otherwise have led them to "scab", to use the vernacular, breaking the union's strength at its most critical moment, weakening its bargaining power when it was most in need of exerting it. With compulsory membership, the employee who ignored the picket line could later be subjected to fine and even dismissal from his job for his derogation of group authority. These penalties would not often need to be used; their existence would usually be sufficient to deter the individual from contesting the claims of the group over him.

Now the question I should like to raise, which I cannot answer but which it seems to me is worth discussing, is this: if a majority union were given some further grant of exclusive right of representation covering the period of a strike, corresponding to the right now granted through the National Labor Relations Act at all times other than a strike, would this be sufficient inducement to it to forego any further demands for compulsory membership? If compulsory union membership is distasteful to many Americans, cannot the objective which leads the unions to seek it be secured through other means, entailing no significant break with a principle—majority representation—which has already been

accepted? I wonder, for example, what would be the feeling of unions and managements if a union-administered post-strike vote, which appears to be desired by or acceptable to the Administration as an amendment to the Taft-Hartley Act, were to be coupled with a provision that a *majority* vote would bind *all* employees, ruling out any back-to-work movement, until the authorized union officials declared the strike at an end. I do not advocate such a provision; I simply raise as an issue whether we should not consider something along this line as an alternative to the closed shop, which is now outlawed, and the union shop, which is now severely restricted.

Although perhaps the major union incentive for seeking the closed or union shop is to secure its representation rights, there is another, but closely related, consideration. Let us go back to Section 9 (a) of the Labor Act, which specifies that the designated union shall be the exclusive representative of *all* the employees in the unit, whether or not they are members of the union. This requirement that it fairly represent even those who have voted against it follows almost of necessity from the fact that the majority agent has exclusive bargaining rights. If this *sole* bargaining agent acted on behalf of its members only, nonmembers in the unit would be deprived of representation. In the first clear expressions of the doctrine of exclusive representation, back in the days of the NRA and before the days of the Wagner Act, the Labor Board explicitly ruled that to accord a union the status of exclusive agent imposed on it the requirement of equitable treatment of the nonmember minority groups which it also represented. The point has been upheld in our federal courts. The Fifth Circuit Court has said, in one instance: "When the Steelworkers union accepted certification as the bargaining representative for the group, it accepted a trust. It became bound to represent equally and in good faith the interests of the whole group. It ought not to discriminate in the execution of its duties between its own members and employees who belong to another union or to no union." And the Supreme Court, in another case, has asserted:

> The duties of a bargaining agent selected under the terms of the Act extend beyond the mere representation of the interests of its own group members. By its selection as bargaining representative, it has become the agent of all the employees, charged with the responsi-

> bility of representing their interests fairly and impartially. Otherwise employees who are not members of a selected union at the time it is chosen by the majority would be left without adequate representation.

This responsibility on the majority representative is not always a simple burden to carry. It means that the organization and finances of the union must be placed at the service of all in the bargaining unit, whether or not they contribute to its functioning. This often means reimbursing, out of the union treasury, the union steward and committeeman who attend to grievances on behalf of people who have contributed not a penny to the union treasury. If the responsibility is adequately discharged, it may mean pressing to arbitration a case on behalf of a nonmember, including all the expenses attending arbitration. I can testify that such an eventuality is not merely a flight of imagination but at times a reality, since I once served as arbitrator in precisely such a circumstance, with a local of the Steelworkers' union going to considerable expense to try to secure what it believed to be equitable treatment for a discharged employee who had consistently refused to join the union.

Now it can reasonably be argued that if the right of exclusive representation carries with it the obligation of fairly representing all employees in a bargaining unit, then there is a reciprocal obligation on the part of all workers in the unit to contribute financially to the support of the organization which represents them. The payment by nonmembers of the equivalent of the dues payment by members does not, however, necessitate joining the organization. Without embracing the principle of compulsory union membership, we can nevertheless recognize the legitimate right of the exclusive bargaining agent, voted in by a majority, to receive the support of all those to whom its benefits extend.

This is the formula which was given wide currency by the arbitration award of Justice Rand of the Supreme Court of Canada, in the Ford-Canada decision of early 1946. Justice Rand refused to grant the union the power of compelling union membership, which it sought, but he recognized the merit of the so-called "free rider" argument. In his decision he wrote:

> The employees as a whole become the beneficiaries of union action, and I doubt if any circumstance provokes more resentment in a plant than this sharing of the fruits of unionist work and courage by the nonmember. . . . It would not then, as a general proposition, be inequitable to require of all employees a contribution towards the expense of maintaining the administration of employee interests, of administering the law of their employment.

The nonpaying nonmember serves as a constant implicit taunt to the paying member of what a "sucker" he is; the situation confers a special advantage on the nonmember which—to use Justice Jackson's phrase—"may prove as disruptive of industrial peace as disadvantages." And this is a threat to the union's very survival, and hence to the collective bargaining relationship which a majority has favored.

Let me now pull together the remarks which I have made. I have suggested that it may be desirable as an alternative to the closed shop to consider two generalized types of amendments to our labor law: one would extend to the strike phase of collective bargaining, in some manner yet to be determined, the principle of exclusive majority representation, a principle which now characterizes only the pre-strike phase of collective bargaining. The other would recognize the obligation of nonmembers who are nevertheless represented by a bargaining agent to contribute to the financial support of their representative.

What would be gained by this arrangement over what the closed shop or union shop itself offers?

First, it avoids any reliance on compulsory union membership, and thereby avoids the sacrifice of principle which I believe many people *genuinely* affirm. I know that unions have often held to the belief that such principle is only a convenient shield for economic interest, and that such principle will be readily enough sacrificed when it pays to do so. The unions may well be right in specific instances, but I feel sure that there are numbers of people who are sympathetic to unions who nevertheless oppose compulsory membership. Some, such as Justice Rand in Canada, have rejected it because it would deny to the individual "the right to seek work and to work independently of personal association with any organized group." This objection becomes increasingly relevant as unions, which are part of a larger labor

movement, spread their activities into the broader arena of national politics, where their activities are less closely related if not sometimes actually unrelated to the business of providing representation in a specific bargaining relationship, and where individual employees for that reason may object to forced association. But I do not choose to argue here the right and wrong of such a position; I am merely stating my own belief that principle, however enlightened or misguided, plays a substantial part in arousing opposition to the union or closed shop, and the unions may as well recognize that fact.

By the alternative route which I am suggesting that we consider, such a principle is respected. Membership is not compelled against any worker's will. But while thus recognizing the force of this objection to the closed shop, we may also recognize the "legitimate" objective of the union—to secure collective bargaining against the fatal weaknesses of multiple representation (whether through minority unions or rugged individualists) and of nonsupport. If we can reasonably satisfy the unions' understandable aspiration for security, through other devices than compulsory membership, it would seem desirable to talk about those other devices.

I suppose that one objection to such an approach may be that it would strengthen the unions too greatly, even though perhaps not to the extent that a closed or union shop would strengthen them. Admittedly the expected result of such an approach would be to strengthen the unions, to shift somewhat the relative bargaining powers between unions and management. But this is an issue which we are used to discussing and deciding, and whatever virtue inheres in the approach I have suggested lies precisely in posing the problem of union security as one of relative bargaining strengths rather than as one of principle. The unions have said that among those opposed to the closed shop, principle is only a cloak for expediency. While I think they overstate their position, it may be worth meeting their argument by removing whatever cloak is there and exposing the real issue more sharply, free of the obscuring shadows of the issue of forced association through compulsory membership.

Remarks by the Chairman

Chairman Warner: Our previous speaker in his stimulating paper has proposed, King Solomon-like, a judicious solution for an insoluble problem.

The next speaker also has something to say about solutions. He is Mr. Theodore R. Iserman, a distinguished lawyer with considerable experience in representing management in labor relations cases. He has also devoted considerable time to the legal aspects of our national policy in regard to labor problems. He is at the present time a member of the Council of the Section of Labor Relations Law of the American Bar Association, and was formerly Chairman of that Section. He appears frequently as an expert before committees of the Senate and of the House of Representatives on various aspects of labor legislation. In this capacity he testified in 1947 before the Senate and House Committees which were then considering the labor legislation which was later to emerge as the Taft-Hartley Act. He was also one of the lawyers who was called in to assist in the actual drafting of that law, and it is a matter of some interest here today that the Taft-Hartley Act includes many of Mr. Iserman's recommendations. Mr. Iserman is also the author of two books which are relevant to our discussion. One is entitled *The Wagner Act and Industrial Peace*, and the other, *Changes to Make in Taft-Hartley.*

Mr. Iserman will speak on the subject, "Local and Federal Regulations of Compulsory Membership".

LOCAL AND FEDERAL REGULATIONS OF COMPULSORY MEMBERSHIP

T. R. ISERMAN
Partner, Kelley, Drye, Newhall and Maginnes
New York City

WHEN we think of compulsory unionism, we usually have in mind arrangements between unions and employers under which employees must join a union in order to get a job or to keep one. Under a closed-shop contract, an employer may hire only members of the union. Under a union-shop contract, he may hire whom he pleases, but employees must become members of the union within a stated period, usually a week or a month. This is, indeed, compulsory unionism, but these are not the only arrangements that tend to force employees into unions against their will.

The National Labor Relations Act provides that when the majority of employees in an appropriate bargaining unit, which may be a department, a whole plant or a group of plants, select a union as their bargaining agent, that union becomes the exclusive bargaining agent of all the employees in the unit. That union negotiates wages, hours and working conditions for all the employees. No individual employee may bargain for himself. If he has a complaint or grievance, under the law the union has the right to intervene in any discussion between the employee and his employer concerning the grievance.

The power to represent members and nonmembers alike as their exclusive bargaining agent is a power that the law gives to no other kind of organization. It is a power that gives to unions far greater control over working people than any other private organization has over other citizens. It is a power that forces employees into unions. For it is only if an employee joins the union that he, even theoretically, has a voice in determining his own wages, hours and working conditions, and effective help in settling his complaints.

The right to act as the exclusive bargaining agent of employees is far more important to unions than any right to force employees

to join unions under closed-shop or union-shop contracts, and I am sure that if unions had to choose between these rights, they would choose the right to act as exclusive representatives.

Another widespread kind of arrangement that tends to compel union membership involves pension and welfare plans. In some instances, the arrangements provide pension and welfare benefits to union members only. In industries that affect interstate commerce, these discriminatory arrangements are unlawful, but they nevertheless exist. Even when the arrangements are not discriminatory, they tend to immobilize workers, particularly those whose years of service give them a substantial stake in a pension plan, and, by the same token, tend to keep employees subject to control by the union that administers the pension plan.

Federal law purports to forbid unions to use force or threats of force or of economic reprisal to compel employees to become or remain members of the union. Nevertheless, force and threats are not uncommon among unions' organizing techniques, and neither federal law nor state law is effective against them. Aside from force and threats, unions have other tools, such as ostracism—or the silent treatment—and abuse, that they use to compel employees to join.

The power that unions have under the law as exclusive bargaining agents is so great, their violence against nonmembers is so widespread, notwithstanding the law, and their ability to make life in the plants miserable for nonmembers in ways that no law governs is so well developed that most employees in unionized industries are in far greater fear of the unions than they are of their employers.

With all these things tending to force employees into unions, there seems to be no real justification for using further methods of forcing into the unions those few who are strong-minded enough or misguided enough still to resist joining.

But in America, at least, intolerance in unions equals if it does not exceed the intolerance of the Spanish Inquisition. To a union, existence of an unorganized minority, no matter how small, denies its right to live and is intolerable. Hence, unions insist that employers include in the contracts between themselves and the unions clauses that permit only members of the unions to work for the employers, denying employment to all others.

Under the Wagner Act, these clauses compelling union membership could require employees to become members in order to get jobs or in order to keep them. Once a man became a member of a union, the union could expel him and require his employer to fire him for any reason or for no reason. If a member criticized the union's policy, if he offended a union official, if he supported political candidates or political policies that the union's ruling clique opposed, the union could expel him and cost him his job.

Under the Taft-Hartley Act, an employer and a union may agree only that an employee must join the union within 30 days after the date of the contract or after he gets a job. The union still may deny membership to him or expel him from membership for almost any reason, thus denying him any voice in determining his wages, hours and working conditions. Having expelled him, it may treat him like a pariah and force him to quit his job. But the union may require the employer to discharge him only if he fails to tender the union initiation fees and union dues.

The law also provides that a union may not make a contract requiring employees to join it if the majority of the employees voting in a National Labor Relations Board election vote to deprive it of authority to make such a contract.

For many years, the Railway Labor Act forbade employers and unions subject to it to contract to compel employees to join unions. In 1951, Congress included in that Act provisions like those of the Taft-Hartley Act, permitting limited forms of union shops.

The Taft-Hartley Act, in Section 14 (b), has another important and highly controversial clause. It provides that nothing in the federal Act shall be construed to authorize contracts compelling union membership in any state or territory whose law forbids such contracts. Sixteen states, mostly in the South and West, have enacted, either as statutes or as constitutional amendments, some form of "right-to-work" laws, forbidding contracts compelling union membership. Some other states forbid unions to use force and violence in recruiting members. Others forbid contracts compelling union membership unless a simple majority of the employees, in some cases, or a two-thirds or three-quarters majority in others, authorize such contracts.

Under the Taft-Hartley Act, these laws are valid. Unfortunately, in amending the Railway Labor Act, Congress failed to include a clause like Section 14 (b) of Taft-Hartley. The Santa Fe Railroad is litigating the effect of this omission.

The labor unions profess to see an inconsistency between the provisions of Taft-Hartley that permit a limited form of compulsory unionism and those that permit the states to forbid all forms of compulsion. There is no inconsistency.

The national labor policy, as set forth in the Norris-LaGuardia Act, the Wagner Act and the Taft-Hartley Act, always has been that individual employees should be free to join or not to join unions, just as they choose. Both the Wagner Act and the Taft-Hartley Act have forbidden employers to discriminate against employees, either to encourage or to discourage union membership. That is national policy. The provisions of these statutes permitting some measure of compulsory unionism were exceptions to the policy each of these laws laid down.

If we are to have a federal policy regulating the matter, there is nothing inconsistent, illogical or inappropriate in Congress' prescribing what, if any, exceptions are permissible under federal law, and providing, as Taft-Hartley now does, that the states may adhere more strictly to the policy by forbidding all forms of compulsory unionism than federal law itself requires.

It does not seem to me that the right of a man to work ought to be subject to a deal, whether voluntary or coerced, between private parties, his employer and the union. It does not seem to me that any kind of private organization ought to have the right to levy taxes or tribute on the right to work. It does not seem to me that any majority ought to have the right, by law, to exterminate a minority. It does not seem to me that compulsory unionism, in any form, has any logical, economic, moral or political justification.

Remarks by the Chairman

Chairman Warner: Mr. Iserman, in commendable lawyer-like fashion, has given us his straightforward brief against permitting the continued existence of compulsory unionism.

The setting is appropriate, therefore, to a discussion of the pros and cons of closed-shop problems. We are fortunate indeed to have as our next speaker Mrs. Elinore M. Herrick, whose experience as public administrator, coupled with her close contact with industries in industrial and personnel problems, gives her a superb vantage point for analyzing the opposing claims.

In thinking over Mrs. Herrick's many qualifications, I am extremely impressed with the diversity of her interests. Although at the present time the Director of Personnel of the New York *Herald Tribune* and formerly Director of Personnel and Labor Relations for the Todd Shipyard Corporation, Mrs. Herrick is also an honorary member of the International Printing Pressmen's and Assistants Union of North America, A. F. L. She has not told me whether she qualifies as a pressman or as an assistant, but in either case we must acknowledge this additional evidence of her absolute qualifications for discussing both sides of the issue we are considering. In addition to the posts I have mentioned, Mrs. Herrick served as Chairman of the New York City Mediation Board from 1933 to 1934, as Executive Vice Chairman of the National Labor Board in New York, New Jersey and Connecticut from 1934 to 1935, and as Director of the New York Region of the National Labor Relations Board from 1935 to 1942. She is also a former trustee of Antioch College.

It gives me great pleasure indeed to introduce Mrs. Herrick!

PROS AND CONS OF THE CLOSED-SHOP ISSUE

ELINORE MOREHOUSE HERRICK

Personnel Director, New York *Herald Tribune*

PERSONALLY I have very mixed feelings about the closed shop. It was devised long before workers had a legally protected right to organize. It was a defensive measure to prevent employers from destroying unions and from breaking down hard-won wage scales. The worst evil of the closed shop comes when it is joined to the "closed union". Shortly after World War II, I recall that two young veterans came to me to see if I could help them get jobs in the *Herald Tribune* composing room. Both had uncles who were working there and who were members of "Big Six"—the Typographical Union. They wanted to join the union, but said they had been told by the union that merely having uncles who were members did not qualify them for membership, and that to gain admission their fathers had to be members.

Although the Taft-Hartley Act bars the maximum form of closed shop, there are many pressures arising from the form of exclusive-representation bargaining which is our national legal pattern and from the wide-scale adoption of "fringe" benefits that are leading more and more to the breakdown of this ban in the Taft-Hartley Act. I shall point out some of these aspects as I go along.

Whether we like it or not a case can be made for "the closed union". The highly successful union which has won high wage scales and all the "gimmicks" it could devise will attract more recruits to the industry than there are jobs. In an industry which contains irresponsible, small employers, there is some reason for not only the closed shop but the closed union as a means of protecting the gains won from the chiseling employer. I remember the fly-by-night garment shops of the 1930's which, literally, overnight fled from New York City to New Jersey and Pennsylvania and what a dreadful social and economic problem they posed to the International Ladies' Garment Workers' Union. The I.L.G.W.U. union shops and contract clause binding an employer not to move for the duration of the contract were a

direct fruit of those experiences and it has been good for New York City's economy.

There is an inevitable tendency toward seeking the closed shop when unions take over the management of welfare funds. Unions with welfare funds cannot be expected to admit new members, take responsibility for them, when the union knows that its particular labor market is glutted or when it has unemployed members, letting new members drain off benefits to the detriment of old-time members. Some of the testimony before the present session of Congress has indicated that there have been abuses of these union-managed funds by withholding benefits from workers who have shown less than 100 per cent enthusiasm for the union leadership. Even when such funds are set up as jointly managed by unions and employers, it is regrettable but necessary to note that employer representatives on the fund too often fail to measure up to their responsibility in that connection. The scandalous misuse of the building-service-union fund in which Howell was murdered is a case in point—there was employer representation in the management of that fund in theory but not in practice.

Unions want the privileges that flow from the status of "voluntary associations". Too often they want this without the responsibilities. A major responsibility of free association is to persuade rather than coerce membership. The unions have so many powerful arguments for gaining members by persuasion that one would think they would be more aware of the greater loyalty that persuasion rather than coercion generates. Hardly a day passes on my own job that I am not made aware of how much trade unionism has done to raise the wage level, to protect workers from unjust discharge and to improve working conditions. I know also that strong unions have imposed many costly and unsound practices on industry—"featherbedding" in my own industry—the working rules on the railroads for another example. But I look at an employee record that shows a starting wage of $4 a week back in the 1920's and today this same man or woman is getting $85, $90 or $100 for virtually the same work. To a very large extent the union is responsible. The big jump in wages in these cases came the year of the first union contract. Because so much of the present well-being of the workers is due to the efforts of the unions through collective

bargaining, I do not really like "free riders" myself and have a fundamental sympathy with union determination to have all employees in the collective bargaining unit join the union—at least the younger employees. I think the old-time employee who does not want to join the union presents a problem which I will discuss a little later.

But I remember with sadness and a sense of guilt the man who in 1933 had a job with the Lily Tulip Cup Company. When Big Six organized that plant they forced his discharge. I found out that twenty years earlier he had been a member of the union, had gone on strike at a Kingston print shop but had gone back to work before the long strike had ended. He had had to choose between the union and starvation for his wife and seven children. This was before unemployment insurance and large-scale welfare relief plans. Parenthetically, I do not think we realize fully what a big difference these social devices have made in the psychological approach of workers to strikes, their willingness to embark upon them and to stick with them. Because this man had helped break a strike twenty years earlier the union hounded him and ousted him from the Lily Tulip Cup job. This one case—and there are many others—has stuck in my throat for twenty-one years. But there was nothing I could do about it. I was then Chairman of the New York City Board to administer Section 7A of the NRA. But to this day that man haunts me. I argued with the Big Six leaders who were my friends but to no avail. The Taft-Hartley Act now prevents a union from forcing discharge for any reason other than nonpayment of union dues or initiation fees. Even if the union expels him the employer cannot discharge him for other than these two stated reasons. From my standpoint, this is one of the important reforms produced by the Taft-Hartley Act. I hope this provision of the law is never weakened, though President Eisenhower has proposed that it be.

I operate now under a union-shop agreement which requires that 9 out of 10 new employees must join the union within 30 days to retain their jobs and that present members must maintain their membership. This form of agreement protects the right of the long-term employee to remain out of the union if he wishes. I save our 1-in-10 exemptions because I really be-

lieve it is better for the management to have all employees in the union. It reduces internal friction. In addition, I want to use the exemption when an individual is reluctant to join or when he is to fill a top-grade job which is likely to lead him into a supervisory position. I always urge the new employees to be active in the union, to attend meetings and really take part in the making of union policy.

The right of exclusive bargaining which the Wagner Act imposed and Taft-Hartley has continued, and which is the bedrock of protected union organization today, has made the problem of compulsory unionism much more complex. The union shop is an attempt to reconcile degrees of compulsion with the basic tenets of a free society and the freedom of association under which unions claim to operate. Exclusive bargaining rights whereby the union is legally required to bargain alike for members and nonmembers in the bargaining unit tend to force the closed shop. The latter leads toward union monopoly in the labor market. In an industry where the closed shop in its various forms has long been established it is unrealistic to think that the Taft-Hartley Act has abolished a de facto closed shop. Politically the subject of union monopolies seems too hot to handle. Yet, it seems to me that, with the extension of unionization and compulsory unionism, the monopolies being created thereby will have to be faced before long.

One aspect of this problem is the fact that, although we speak of determination by majority whether a given union should receive exclusive representation rights, actually a majority of those who vote—not a majority of those in the bargaining unit—decide the issue. That is why during the early Wagner Act days employers urged *all* employees in the bargaining unit to vote. But they do not all do so. That is also why employers also carved out some mighty strange bargaining units when consenting to an election because they wanted to include the votes of persons they assumed would be anti-union. It seldom worked as planned. After the union is established we pass clearly from any semblance of majority rule to minority rule. Only 15–20 per cent attend union meetings and decisions are reached chiefly by voice vote. So actually you get the coerced vote of a minority which can make its policy bind *all*

because of the fiction of exclusive bargaining. This hard-core minority can force the granting of some form of compulsory unionization. Even when the government ran the union-shop elections the results were overwhelmingly for the union shop. When the union has the power of a closed or even a union shop, the power delivered to it by a minority is very great.

What are an employer's responsibilities in connection with the closed shop in any of its degrees or forms? When the Newspaper Guild appeared to be Communist-dominated, I know that I could never have forced myself to consign employees willy-nilly to membership. Suppose you are dealing with a racket-ridden union and you know that a large part of the wages the union won from you are going to be taken away from the employees on your payroll—what is your responsibility then? Can an employer always afford to act according to his convictions? The Protestant Council of Churches has made a study of the extent to which Christian ethics are carried forward into our business lives. But there are hard realities in opposition. I have a great respect for the leadership of the Newspaper Guild today, but what is the guarantee that it will maintain the caliber of its present leadership? Once an employer has accepted the principle of compulsory unionism as a practical matter, he is stuck with it and so are his present and future employees, despite the provision of the Taft-Hartley Act which gives the employees the right to petition for a decertification vote. I have seen a few instances of the kind of internecine war that such a situation develops and the destruction of production resulting from the turmoil of the fight. And there are too many examples of firms that have been forced out of business because their employees rejected a powerful union, such as the Teamsters' Union.

But where you have a responsible union, there is much good that can flow to an employer from having a work group that is bound together by the ties of union membership. The union has then a status of authority which it can exercise responsibly. For example, back in 1948 we were having a dreadful time with absenteeism; percentages of paid days lost to total workdays were running as high as 11 per cent in some departments, 4.6 per cent, 3.9 per cent, and so on. I put the problem up to the Newspaper Guild, for it is in their contract that we have an exceptionally liberal sick-leave program up to 20 weeks'

full pay and 20 weeks' half-pay after 10 years of service. They were at first shocked by the thought that management could have a "grievance". I pounded the theme that collective bargaining is a two-way street. Finally they studied the records I had compiled and got out a leaflet to all in the bargaining unit warning that the Guild would not tolerate malingerers and would support management in discipline in such cases. The result was spectacular. In 1953, our average was 1.58 per cent of total working days lost due to absence for illness. I recently received a Chicago Research Foundation report on attendance among 22,000 employees in firms of all sizes showing an average of 3.42 per cent of working days lost, which makes our record look very good to me. The Guild also warns employees who find it hard to get up in the morning! I think the fact that we had a 9-out-of-10 union shop and the union felt secure when I appealed to the Guild to help on the attendance problem psychologically made it possible for them to take on some responsibility.

In a recent article Professor Sumner Slichter of Harvard University wrote: "The Taft-Hartley Act, as everyone knows, permits the union shop under certain conditions, but forbids the closed shop. The union shop provisions have worked out well in many industries, but there are wide areas in which the closed shop serves a useful purpose to workers and employers alike." No situation is perfect, obviously. Certainly in the newspaper industry the traditional closed shop has made for smooth relationships among the employees themselves. It has had other disadvantages which come more from the closed-union situation, that is, an aging group of employees to whom little or no new young blood is being added, and there is inefficiency which results. In the press room, for example, we have "fly *boys*" in their sixties who will probably die as "boys" before a journeyman's situation opens.

Let us look at the position of those who insist upon "the right to work" in opposition to any form of union security. A number of states, chiefly in the South and West, have adopted "right-to-work" statutes. Last fall, Governor Gordon Persons of Alabama signed such a bill. His message at the time of signing has been widely publicized, but some parts bear repeating.

Mainly, this bill provides that no person shall be denied the privilege of working because he does not belong to a labor union and that no firm shall be forced to deduct union dues from the salary of the worker.

Our labor union friends contend, and rightfully so, that unions have helped make possible better working conditions and higher wages. Because of this they feel that all employes in a unionized plant should be forced to join the union and that union dues be deducted from pay checks in what is known as the "check-off" system. Union officials refer to those who do not desire to belong to the union as "free riders" because such non-members obtain benefits of unions, without helping pay for such benefits.

Along with this same line of reasoning is the fact that our churches are the greatest organizations in the world. They have done much for all mankind. Yet, no citizen is forced to belong to any church or required to pay dues.

Unquestionably the American Legion, the VFW and other service organizations have done much to provide benefits to the veterans. Yet, it is not required of any veteran that he be forced to join any of the service organizations or required to pay dues to any of them.

As a matter of fact, individual labor unions themselves have the right to say whether they belong to the A. F. of L., the CIO or, in the case of others such as the railroad organizations and the UMW, to remain free and independent unions. . . .

Many other such examples could be given. It may well be that workers in some of our northern states do not object to being required to join the labor organization in their plant and have no feeling about being forced to have dues deducted from their pay checks . . . .

However, in the south we have free and independent workers. Many wish to join labor organizations and do so. Certainly that is their privilege. On the other hand, many do not like the idea of being forced to join any labor union as a condition to work. Neither are they agreeable to having union dues deducted from their salary checks . . . .

In my opinion, all of our labor unions will be far stronger and the members in them will have a far greater interest and respect in the organizations if membership can be shown to be desirable and they are not forced to join.

Because I believe in free labor and free enterprise, I am today signing the "right-to-work" bill.

Of course, Samuel Gompers, founder of the American Federation of Labor, opposed the closed shop, believed firmly in the

strength that comes from free association. Yet it is in the A.F.L. that there exist the tightest and harshest closed shops in the country—despite the Taft-Hartley Act.

As the pressure grows for passage by the states of more "right-to-work" laws, employers with multiple production units are confronted with a difficult problem. A company operating in half a dozen states makes a master agreement with a union. The pattern for that agreement was probably set in the oldest plant unit. If there was a union shop there, it is more than likely that the union will use its economic strength to have it retained for the master agreement. Wages for particular jobs are often left to local negotiators because of variances in operations. But the pattern of working conditions is part of the master agreement. Suppose one plant involved is in a state which has a "right-to-work" law. Immediately the company has a great big headache—and possibly a strike.

As has been pointed out under the Taft-Hartley Act the union shop is legal. Elections to determine whether the workers wanted the union shop were abandoned by Congress because of their expense and the fact that the voting was always overwhelmingly in favor of the union shop. The idea of elections to prevent a minority from shoving the union shop on those who might not want it was all right but it struck me as naïve at the time, as experience has proved it was. The rank-and-file union member has no greater tolerance of free riders than have the union leaders. But now compulsory unionism becomes a subject for economic pressure.

If it were not for the existence of bootleg closed-shop understandings—even when not written out—this discussion of the closed shop would be merely an academic exercise. But the closed shop in reality still exists despite the Taft-Hartley Act. The notion that anyone must join a union and be accepted before he can get a job is thoroughly repugnant to many people. This is the essence of the closed shop. There seems to me to be a significant difference between that approach and the union shop which places no barrier to getting a job but requires one to support the union after being hired. Perhaps in making this distinction I am merely giving a sop to my conscience!

If the majority of the employees have chosen to be represented by a union, I think it is infinitely better for management to have

all employees in the union. Even in the newer unions it does not take long for a feeling of resentment against the free rider to develop. I will go further and say that I think management serves its own interests best when it makes it easy for all to participate actively in the union. As I look back on some of my wartime experiences with labor relations in the Todd shipyards, I realize now that we would have been smart to encourage the Shipbuilding Workers Union (C.I.O.) or the A.F.L. Metal Trades to hold their membership meetings on company property and even on company time for the sake of keeping the management of the unions out of the hands of the "extremists" who were willing to take a long drive into town after a hard day's work to attend a meeting at the union hall. In the nature of things shipyards are never built in the heart of the city. I think two strikes that we had would never have come to pass if there had been fuller participation by the union membership.

I cannot get as emotional about this "right to work" as many do. I was very much interested in an article by a Jesuit priest, Father George E. Lucy, whose statement was published by the University of San Francisco recently. The heart of his argument is to be found in the following excerpts:

> Fundamental to all their arguments is the error that the right to work is an absolute right and a purely personal one. It is no such thing. The right to work is a conditional right and a social one.
>
> The right to work is honey-combed with conditions. First of all, a worker must be qualified for a job and must be accepted by the employer. No American tradition demands that Joe, the hod-carrier, has a right to a carpenter's job. And once Joe is on a job he is well aware of many other restrictions. He must report at a specific time, work so many hours and according to rules and regulations, accept certain deductions from wages for Social Security, etc. No one seems to get excited about these restrictions on Joe's liberty. He is free to reject these conditions and look elsewhere for a more agreeable job. But if he accepts the job, he also accepts the conditions.
>
> The right to work, then, is not an absolute right. It is limited in many ways by the employer and by the government. No one claims that these restrictions are un-American and destructive of a workingman's freedom. . . .

> . . .One needn't join the American Legion or any such like organization, but neither does he share in its benefits. The advantages come only after he joins and pays his dues. It is quite different when a nonunion man works next to a union member. . . .

President Eisenhower wants the states to take more responsibility in labor relations. He has a committee at work studying where and how to draw the lines between state and federal authority. Meanwhile the Supreme Court has ruled (*Garner* vs. *Teamsters' Union*) that "When federal power constitutionally is exerted for the protection of public or private interests, or both, it becomes the supreme law of the land and cannot be curtailed, circumvented or extended by a state procedure merely because it will apply some doctrine of private right."

Nevertheless, one important area of action remains open to the states. Under Section 14 (b) of the Taft-Hartley Act it is expressly stated that nothing in the Act shall authorize agreements requiring labor-union membership in states where such contracts are prohibited. I believe that Governor Persons accurately reflected the feeling of a large number of people, including workers, to whom the idea of compulsory union membership is abhorrent and a repudiation of our democratic freedoms.

Although I think there is much merit to what Father Lucey says, too often unions demanding some form of union security fail to realize it is a privilege not a right which they ask and that they must accept responsibility and accountability. And these duties are not alone to union members, to those whom they represent, but to the public and to employers.

Unions have become so large and powerful that in their own interests they should strengthen democratic procedures and practices within the union. If they fail to take these actions voluntarily the government is bound to impose standards. This has begun to happen in the management of welfare funds. Taft-Hartley requires unions to file their constitutions and by-laws with the Department of Labor and requires that there be provision in them for regular election of officers, conventions, etc. But look at the corrupt I.L.A.—they met and voted a lifetime job to their president—Joe Ryan. I remember some years ago a painters' local in Brooklyn whose business agent was convicted of extortion and sent to Sing Sing. What hap-

pened to him when he got out? The local voted him back into his old office again. I asked a painter why they had done so. His answer was very realistic. "The bosses know he's a plug-ugly and so he is able to get more for us than a gentlemanly fellow could."

Conclusion

Looking at the national scene, I come to certain conclusions. First, I would never have outlawed the closed shop under the Taft-Hartley Act in industries where it had long been accepted. There are some industries like printing where the closed shop goes back to the Civil War, for example. In a union which has had the closed shop for more than a generation it has become almost an article of religious faith to refuse to work with a nonunion member. Outlawing the closed shop in many industries merely led to bootleg "understandings" or to strikes or unsanctioned work stoppages. That is what has happened in the newspaper industry. A more realistic approach would have been for Congress to outlaw the closed shop where it had not existed for, let us say, five or ten years.

Secondly, I believe that there is today no justification for permitting extension of the closed shop to recently organized plants. Although I have stated the case for the "closed union" I believe it is incompatible with the growth of unionization under government protection. There is no doubt that the closed shop plus the closed union gives a power which too often corrupts.

Thirdly, conceding that states today have a right to pass the so-called "right-to-work laws", nevertheless with the spread of unionism and the multiple-unit form of industrial organization there is a need for a national policy even at some abridgement of "state rights".

The great problem we face—and it can only be answered by persistent effort to make unionism serve the public interest—is reconciling the preferred status of trade unions today with their claim to be voluntary associations and to encourage greater acceptance by them of their private and public responsibilities. I believe that the effort of the practitioners of the art of labor-management relations will contribute to the balancing of equities.

Remarks by the Chairman

Chairman Warner: We have now heard the pros and cons and must move on to the final item on our program.

In his talk on local and federal regulation of compulsory membership in trade unions, Mr. Iserman made reference to the provision in Taft-Hartley which waived the union-shop proviso of the federal law in cases where there were state statutes which forbade the closed shop or the union shop altogether.

Our next speaker will take up this question more in detail in discussing the experience of the states in defending the right to work. Mr. W. R. Brown, Director of Research for the Missouri State Chamber of Commerce, has kept a close watch on legislative efforts of the various states in the labor field, and has published authoritative and comprehensive articles on the experience of states with right-to-work clauses. His careful observations in this area will now be placed at our disposal. I am pleased to introduce Mr. Brown!

STATE EXPERIENCE IN DEFENDING THE RIGHT TO WORK

W. R. BROWN

Director of Research, Missouri State Chamber of Commerce

SHOULD the right to work at a chosen occupation regardless of union membership be protected by state law? Or should this right be denied workers who do not or cannot join or maintain membership in a particular union? This is the issue raised by current efforts to enact or repeal state right-to-work laws.

Today sixteen states have right-to-work laws that outlaw all forms of compulsory union-membership agreements.[1] South Carolina became the sixteenth state to adopt a full-fledged right-to-work law on March 19, 1954, following a powerful appeal by Governor Byrnes. In Oklahoma, Governor Murray has come out for letting the people decide through an initiative petition. It appears that other states, including Missouri, may use the referendum or petition route.[2] However, relatively little attention has been given to how these laws are working out in practice.

[1] Several more states have laws requiring a vote of the workers before such compulsory-membership agreements can go into effect. But these election provisions do not effectively protect the right to work because they permit the majority to deny minority rights. The right-to-work states are Alabama, Arizona, Arkansas, Florida, Georgia, Iowa, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, Texas and Virginia. For a description of these provisions, see W. R. Brown, "State Protection of the Right-to-Work", *CCH Labor Journal*, June 1953. (Reprints are available from Missouri State Chamber of Commerce, P. O. Box 149, Jefferson City, Missouri.)

[2] Arizona, Nebraska and Nevada adopted right-to-work laws by initiative petition, while the Legislatures referred such issues as constitutional amendments to a vote of the people in Arkansas, Florida and South Dakota. These issues were approved by majorities ranging from 50.6 per cent in Nevada to 70.3 per cent in South Dakota—5 of the 7 states had greater than a 55 per cent majority. Voting statistics were compiled by Council of State Chambers of Commerce at the request of Senator Goldwater, "Taft-Hartley Act Revisions Hearings" before the Committee on Labor and Public Welfare, U. S. Senate, 83d Congress, 2nd Sess., Part 6, p. 3386.

In order to correct this situation, the Missouri State Chamber of Commerce made a survey of the actual experiences of the right-to-work states to seek answers to the following basic questions:

1. Do right-to-work laws really protect the right to work regardless of union membership? Or are the laws being generally violated in fact or spirit?
2. Do they hurt or help improve labor relations?
3. Do they contribute to economic growth or hinder it?
4. Do they destroy unions or hamper collective bargaining?

A complete report on the results of this survey is available from the Missouri State Chamber of Commerce in Jefferson City, Missouri.[3] There is time now to give only a few of the highlights of the findings of this survey.

DO THEY REALLY PROTECT THE RIGHT TO WORK?

Letters from businessmen operating in right-to-work states indicate that for the most part the law is obeyed, and the right to work regardless of union membership is actually protected. However, some businessmen admit that the law is not always fully complied with in their industry or area. *But, even in these cases, they usually add that the law is a big help in improving their labor relations.*

A Tennessee textile mill operator put it this way, and I quote in part: "We know from contact with a number of organized industries here in our state, that the Right-to-Work Law has prevented the establishment of closed shop contracts, has prevented the discharge of many loyal employees who do not wish to join a labor organization. . . ."

Similarly an Arizona general construction contractor wrote that ". . . the law has been very effective in curbing dictatorial union demands and the unions are hesitant to disobey the law."

An Iowa contractor wrote:

> In general, this law affects our operations less than it does other industries because the construction industry is strongly organized and has been operating under closed shop conditions in all of the larger cities of the state for many years. Generally speaking, that condition continues to prevail. Although contracts negotiated

[3] "State Experience with Right-to-Work Laws", *Research Report* No. 22, October 29, 1953.

> between the unions and the employers do not contain the closed shop clause that prevailed previous to the passage of the Right-to-Work Law . . . .

But this same Iowa contractor nevertheless added that the law had helped their labor relations.

A Nebraska contractor wrote:

> Most of the union representatives accept the state law, but they do not like it. Some business agents attempt to evade the law through side agreements that the employer will hire all union employees, or will hire all employees through the union, or that any non-union men hired must join the union in order to retain their jobs. We have been successful in keeping out of such side agreements.

Official law enforcement action is *not* essential to make right-to-work laws effective because these laws permit the individual to appeal directly to the courts for protection and the courts have usually given such protection.

Some state officials have been conscientious in carrying out their duties to enforce right-to-work laws. For example, the Attorneys General of Arizona, North Carolina and Nebraska joined forces in 1949 to defend the constitutionality of their right-to-work laws before the Supreme Court of the United States.

Legal opinions by Attorneys General also are sometimes significant. For example, last year the North Carolina Attorney General ruled out attempts to evade the law through credit unions and "service" charges.

In April of last year the Assistant Attorney General of Nebraska, Robert A. Nelson, appeared before the United States Senate Committee on Labor and Public Welfare in behalf of his state and Governor Battle of Virginia.

He asked the Committee, "Has the result been such that Congress is justified in pre-empting the field?" His answer in part was:

> *First*, a better relationship has developed between the union and its members. *Union membership is now obtained by persuasion rather than coercion.* This is the American way. Individual members are free to think and act and need have no fear of losing their jobs if they express ideas which are contrary to those of the union leaders. Under a compulsory union agreement, the union leaders have no particular interest in whether or not the members attend

union meetings, they either did as they were told to do or lost their jobs. Now the individual members must be satisfied with the action *of the union or they are free to sever their membership.* . . .

Second, a better relationship exists between the employer and the union. No employer wants to be *told that he must fire an employee*, perhaps one who has been in his employ for years and whose competency and loyalty to the employer is without question, merely because such employee cannot agree with certain principles of the union or union leaders. . . .

Third, one of the greatest causes of strikes has been eliminated. *The closed shop has been one of the primary causes of strikes.* Although the questions of wages, hours and working conditions were all agreed upon, a strike would be called because the employer refused to agree to a closed shop. . . .

Fourth, public confidence in labor unions is being restored. This, in my opinion, is one of the important achievements in labor-management relations under our law. . . .

Mr. Nelson concluded:

While I have limited my statement to giving the results of the *trial in my own state, I am confident that the results in other states, where right-to-work laws have been on trial, are similar to those of Nebraska.* With these proven accomplishments, is Congress now justified in enacting legislation which will strike down the good which has been done and take from the states the right, which under the constitution is theirs, to preserve to all individuals the inalienable right to work? The answer is an emphatic "No".

A review of the court enforcement cases in the right-to-work states reveals that the courts have not failed to give relief from violation of the right to work through injunctions and fines *when asked to do so.* The following brief summary of some of the leading right-to-work court enforcement cases will tell much about how effective these laws have been in protecting the right to work.[4]

In 1947 state courts in North Carolina and Tennessee ruled out closed-shop provisions under their right-to-work laws. In the same year, a Florida Court applied its constitutional amendment to a maintenance-of-membership contract provision which would deny the right to work to any union member who did not

[4] For a more detailed account of these cases, see "State Experience with Right-to-Work Laws", Missouri State Chamber of Commerce *Research Report* No. 22.

maintain his membership. The North Carolina decisions were especially significant because they involved criminal penalties.

Another North Carolina case at the same time illustrates that a written compulsory-membership agreement is not necessary to violate right-to-work laws.

The Arkansas Supreme Court in 1950 in the case of *Self* v. *Taylor* struck down a contract provision which it described as creating a "closed shop by subterfuge". In this case an electrical union local insisted on a contract provision for cancellation at any time upon 60 days' notice. This was after the employer refused to continue an old closed-shop provision because of the new right-to-work law. The union constitution prohibited members from working with nonunion employees. Therefore, it was clear that the union intended to use the 60-day cancellation provision to force the discharge and prevent the hiring of nonunion employees.

Still another method of evasion by subterfuge came before the Virginia Supreme Court of Appeals in 1949 in the case of *Hawkins* v. *Finney*. Hawkins had obtained a contract with the Newport News Building Construction Trades Council to print their labor journal on the condition that only union labor would be employed in his shop. Thereafter, Hawkins discharged Finney when he refused to join a union. The court granted damages of $330 to Finney for four weeks of unemployment which resulted. The court commented on the law involved as follows:

> Legislation that protects the citizen in his freedom to disagree and to decline an association which a majority would thrust upon him on the ground that it knows what is best for him, does no violence to the spirit of our fundamental law. The protection of minorities is the boast of our institutions and a basis of their asserted superiority over totalitarian regimes. The results have demonstrated the value of the democratic process.

The Bill of Complaint filed by the Attorney General of Virginia in a Richmond Court on August 7, 1953 reveals the extent to which some plumbing unions have gone to evade the Virginia right-to-work law.

There Local No. 10 of the A.F.L. Plumbers and Pipefitters Union demanded and obtained in some cases agreements with the following provision: "The employer will employ journeymen

and apprentices who are in good standing in the local union unless the local union fails to supply an adequate number upon request." The union refused contractors' requests to change this clause so as to provide that the employers might employ either union or nonunion members.

The Richmond Court showed that its powers were broad enough to handle this situation by issuing a temporary injunction which enjoins and restrains the defendants, their agents, servants, employees and representatives from "in any manner, directly or indirectly violating the provisions of . . ." the right-to-work law.

The case of *Texas State Federation of Labor* v. *Brown and Root, Inc.*, decided by the Texas Court of Civil Appeals on February 6, 1952, provides another excellent case study of the lengths to which unions will go to evade the law. It also shows that the courts will thwart such efforts if the injured parties only have the nerve to appeal to them.

The court record shows that the occurrences which led up to this decision included picketing of construction jobs; refusal to handle or install products of companies that crossed picket lines; mob violence; beatings; threats; forcing nonunion workmen off jobs; throwing beer bottles at a busload of nonunion workers; declaring the entire Austin city power project a restricted area for union men although other contractors on the job were employing only union men; trying to get Brown to operate a closed shop without a written closed-shop agreement; a union attorney telling a State Federation of Labor Convention that it could get around, through, over, or under the law; and the secretary of the State Federation of Labor telling Austin city officials that "union men won't work with non-union men."

The results of these occurrences were court injunctions worded to prevent their recurrence in such a manner as to violate the Texas right-to-work law.

It has, of course, been contended in almost every case involving a compulsory-membership provision that the right-to-work law violated freedom of contract.

The Tennessee Supreme Court rejected this objection very succinctly in February of 1948 in affirming a permanent injunction against the Teamsters striking against Joe Mascari, a wholesale distributor of produce, to force him to sign a union-shop and

check-off agreement in violation of the Tennessee right-to-work law. The court simply ruled such a state police-power regulation would be an unconstitutional interference with freedom of contract without due process *only* if it unreasonably restricts certain employment to a favorite group. The court concluded that the Tennessee law does not restrict employment, but rather makes employment *open* to all regardless of membership or nonmembership in a union.

This interpretation of freedom of contract and due process was upheld by the United States Supreme Court on January 3, 1949, in the famous *Lincoln Federal Labor Union Case.*

The Florida Circuit Court for the 6th Judicial Circuit demonstrated in September 1951 that courts will not tolerate disobedience or defiance of court orders. This case involved picketing of the Pasco Packing Company by the Food, Tobacco, Agricultural and Allied Workers Union of America. The court held union leaders in *contempt of court* for not immediately obeying a court order to cease blocking ingress and egress of the company in violation of the Right-to-Work Amendment and the Anti-Violence Statute by at least setting a personal example of compliance instead of just paying lip service. A few comments from the court opinion will illustrate the philosophical basis and necessity for such injunctions:

> In our present day society labor unions are recognized by law as affecting the public interest, and are charged with a public use. However, a charter issued to a labor organization is not a license for mob violence. . . .
>
> The evidence here is clear that certain of these respondents by reason of their actions and in willful defiance of this court's order prevented ingress and egress to and from the premises of the plaintiff. . . .
>
> The consequences of such action on the part of the defendants were that persons who desired to work at the plaintiff's plant were prevented from doing so, and the "Right to Work" amendment to the Florida Constitution previously referred to for that period of time was rendered a nullity.
>
> The necessity of terminating effectively the defiance of the defendants is readily apparent.
>
> No effort was made by the defendants to avail themselves of the orderly processes of the law to vacate or modify the temporary restraining order. The defendants, on the contrary, resorted to

> mob rule and openly defied and made a mockery of this Court's order.
>
> The public interest requires not only that such contumacious acts be effectively terminated, but also that such acts in the future be deterred.
>
> Such a requirement in the public interest is imperative. If any group, however named or in whatever guise, can with impunity invoke mob rule to defy and flout the authority of the lawful government of our state, then the overthrow of our government by force and violence is no longer an eventuality to be feared, it becomes locally an accomplished fact. . . .

The most recent United States Supreme Court opinion on state right-to-work laws on March 16, 1953 affirmed the Virginia Supreme Court of Appeals in upholding an injunction against picketing of the George Washington Carver School project by unions of the Richmond Building Trades Council for the purpose of forcing the use of *only* union labor on the job.

While Section 14 (b) of Taft-Hartley and the Supreme Court decisions leave no doubt as to the applicability of state right-to-work laws to interstate businesses covered by Taft-Hartley, there is doubt about railroads.

Nebraska and Texas State Courts have recently ruled that the Railway Labor Act provision exempting railroads from state right-to-work laws is invalid. But the United States Supreme Court is yet to be heard from on this question.

DO THEY HURT OR HELP LABOR RELATIONS?

One of the best evidences as to the effect of right-to-work laws on labor relations is the experience of the companies operating under such laws. Letters from businessmen in the right-to-work states who operate all the way from 100 per cent union shop to 100 per cent open shop all indicate that the right-to-work law has helped improve their labor relations.

An Arkansas wood products company wrote:

> I think the law has helped labor relations because we do not have to argue between us about whether we will have union maintenance in our contracts. It has also helped the individual worker in avoiding the pressure that might be put upon him to join a union or to remain in a union against his wishes . . . . There seem to be less labor troubles in Arkansas than in other industrial states, and any trouble results only from disagreement on rates or frills.

A Tennessee printing company said that in one of its departments there was "a total of approximately 125 employees with less than 50 belonging to the union. This would not be possible if it were not for the Tennessee Right-to-Work Law. . . . Fortunately there is no damaging friction between those who belong to the union and those who do not."

A Virginia contractor wrote: "As we see it, the law has helped our labor relations policy considerably. Our employees appear to be entirely satisfied in their non-union status and under this law they are assured that they may remain that way anywhere in the state of Virginia."

The Florida State Chamber of Commerce reported that a coöperative survey with Associated Industries of Florida of representative firms in Florida resulted in three fourths of the firms stating that the Florida Right-to-Work Amendment had a good effect on their labor relations, and one fourth that it had had no effect. The Florida State Chamber interpreted this to mean that, "In view of the fact that Florida has been an open shop state for many years and was such at the time of the passage of the amendment, to say that the amendment has had no effect would mean that it has resulted in continuing the open shop."

Generally the effect of right-to-work laws is to make labor relations more peaceful than they would be otherwise, according to letters from businessmen operating in right-to-work states.

A Nevada construction contractor put it this way: "It has helped our labor relations policies since now it seems as though less agitation is present."

Similarly an Iowa engineering and contracting firm wrote: "The law has curbed many union activities and has made it necessary for their representatives to be somewhat more thoughtful in their claims and activities. It has been very helpful from our standpoint."

A Texas engineering and construction firm summed up the effect of the right-to-work-laws this way:

> The Texas right-to-work laws and other labor laws, such as the anti-violence statute and the picket limitation statute, have brought an era of industrial peace for Texas that we think is unmatched in any of our neighboring states. While they in no way hinder the

organizational attempts of legitimate unions they do give pause to those organizers who would enforce their demands through violence and brutality.[5]

DO THEY HELP OR HINDER ECONOMIC GROWTH?

There is growing evidence that right-to-work laws are having a favorable effect on industrial development in those states which have such laws. This business expansion has resulted in increased wages and markets.[6]

As a case in point there is the recent location of a $3.5 million industry in Gainesville, Texas. Locations in both Oklahoma and Texas were considered. While the decision was being considered, the Oklahoma legislature failed to pass a proposed right-to-work law which was pending there, and this tipped the scales in favor of the Texas location.

That this is not an isolated case is indicated by letters from businessmen who are in daily contact with business expansions. For example, a Texas engineering contracting firm wrote:

> As constructors we have many inquiries from Eastern industries for advice as to plant locations. Almost invariably these industries are fleeing from union despotism in the Eastern states and Texas has gained many more of the migrant industries than such states as Louisiana, for instance, simply because the Texas labor laws give employers some protection whereas Louisiana's do not.

Maurice E. Fager, former head of the Kansas Industrial Development Commission and now a consultant to that state agency, has emphasized the favorable effect that right-to-work laws have on industrial development.[7] Passage of right-to-work laws is one means recommended by him to improve the labor situation in the Midwest.

[5] See W. R. Brown, "State Legislative Protection from Violence and Coercion", *CCH Labor Law Journal*, December 1953 (available in reprint form from Missouri State Chamber of Commerce).

[6] "The Relation Between State Right-to-Work Laws and Economic Growth", Missouri State Chamber of Commerce *Research Report* No. 25, March 18, 1954, gives wage and retail trade statistics.

[7] Statements made to a class in Industrial Development at the 1953 sessions of Southwestern Institute for Commercial Executives at Dallas, Texas.

DO THEY DESTROY UNIONS OR HAMPER COLLECTIVE BARGAINING?

It is impossible to obtain accurate figures on union membership by states; therefore, no categorical statement on over-all union growth in right-to-work states can be made. However, letters from businessmen indicate that the right-to-work laws have not stopped union growth in their particular businesses. Also, studies by Professor DeVyver of Duke University on unions in the South indicate that most unions have continued to grow despite the right-to-work laws.

It is, of course, probable that union growth might have been faster if it were not for the right-to-work laws because they require the union to sell the worker on the value of union membership instead of compelling the employer to force employees to join unions against their will.

Right-to-work laws do not result in abolishing collective bargaining and a return to individual bargaining as has been charged by the opponents of such laws. As Professor DeVyver pointed out, as long as the union retains a majority in the plant, it continues as the legal bargaining representative of all the workers under the Taft-Hartley Act. Professor DeVyver adds that in the South, at least, there have been very few N.L.R.B. decertifications of unions.

In fact, instead of doing away with collective bargaining, the right-to-work laws have helped improve collective bargaining, according to letters from businessmen operating in the right-to-work states.

A Texas metal manufacturer put it this way: "These laws have not had any adverse effect on union growth in our company but have been a very great contributing factor in maintaining some *semblance of balance between management and labor.*"

SUMMARY AND CONCLUSIONS

The results of the Missouri State Chamber of Commerce survey of the experience of the right-to-work states warrant the following conclusions:

1. Right-to-work laws really do protect the right to work regardless of union membership when either the employer or the worker asks the courts to enforce the law. The extent of

violation of the laws varies with industries and areas, but even where the law is being violated, it has improved labor relations. Government officials can rarely be counted on to see that the law is enforced, but the court cases reviewed in the Missouri State Chamber report clearly show that the courts effectively enforce the law and rule out subterfuges when asked to do so by injured parties.

2. Businessmen operating under state right-to-work laws say these laws greatly improve their labor relations in both negotiating and operating and generally make for more peaceful labor relations. This was found to be the case with both highly union-organized companies and nonunion employers.

3. Definite evidence was cited which shows that right-to-work laws encourage economic growth by providing an attraction for new industry and expansion of present businesses.

4. That right-to-work laws do not destroy unions or hamper collective bargaining is shown by the experience of the right-to-work states. What evidence there is available indicates that unions have not stopped growing in the right-to-work states, although their growth may have been slowed because the laws require the union to sell the worker on the value of union membership instead of compelling the employer to force employees to join unions against their will. Right-to-work laws do not result in collective bargaining being replaced by individual bargaining—in fact, they have resulted in improved collective bargaining by making for a better balance between management and labor.

DISCUSSION: THE RIGHT TO WORK

CHAIRMAN WARNER: We are indebted to Mr. Brown for his provocative summary of the experience in the various states.

I would like now to throw open the meeting for discussion from the floor. Would you be kind enough to indicate to whom your question is addressed?

MR. SCHEIDMAN [Union Attorney]: I would like to ask a question of Mr. Iserman and Mr. Brown. I have heard a good deal of talk about the right to work, and especially with respect to the moral and economic benefits derived therefrom. I would like to preface my question with a few remarks. With respect to the right to work, with the decreasing jurisdiction of the federal government in connection with the National Labor Relations Act, what assurance do the employees have of their right even to join unions in the state where the right-to-work laws are introduced and are the law?

Secondly, with our experience in the South in organizing we find that violence on the part of employers, intimidation and coercion, as the Taft-Hartley Act has been interpreted—especially with respect to free speech—do not give the employees the right to join unions because of the coercive effect now considered lawful by the employers. What assurance do these employees have in these right-to-work states where there are no state statutes protecting their rights to join labor unions?

What are the comments of Mr. Iserman and Mr. Brown with respect to these particular points?

MR. ISERMAN: I do not know of any state law that supersedes the right that the Taft-Hartley Act gives to employees engaged in businesses affecting commerce to join labor organizations of their own choosing. The only state laws that I know about forbid unions and employers to compel people to join unions, and none of them supersedes the national statute which protects the right to join and to engage in concerted activities. If any state were to pass such a law the courts doubtless would hold that the national act has preëmpted the field and has guaranteed these rights, and the states cannot take them away.

Now, on the question of coercion by employers, any employer who uses force or threats or even promises in order to induce employees not to join a union is subject to being charged with an unfair labor practice. And if he continues, he can be enjoined, as the questioner as a lawyer doubtless knows. The Taft-Hartley Act does protect the right of free speech which the National Labor Relations Board had greatly limited before Taft-Hartley, but the law still forbids employers to use threats of force or of economic reprisal in order to encourage or to discourage employees from

joining unions. And if any employer violates the law he is subject to its penalties.

MR. SCHEIDMAN: I don't want to get into colloquy, but I asked you to speak on what happened with respect to the decreasing federal jurisdiction which the Board has indicated. It does not intend to assert its jurisdiction in a good many cases. But what about those cases where there is intrastate commerce? And what about those cases where the federal Board does not assert jurisdiction? What protection do these employees have?

CHAIRMAN WARNER: As I understand your question, it has two parts. First, what about the area of interstate commerce where there is declining federal jurisdiction, and what about the area of intrastate commerce where there is no federal jurisdiction and where there may be encouragement from the fact that federal jurisdiction is declining. Is that right?

MR. SCHEIDMAN: That is the basis.

MR. ISERMAN: On that part of the question, the National Labor Relations Board seems to be evolving a policy of excluding from its jurisdiction certain small concerns that may affect interstate commerce only microscopically. That is a question of policy on the part of the Board or on the part of Congress. As far as I am concerned, as long as we have national policy governing labor relations in industries that affect interstate commerce, I think the Labor Board ought to apply it across the board. But in those cases where the Board does decline jurisdiction, or in those cases where interstate commerce is not involved or is not affected, there are some states that have no statutes that apply. And the field is open for the employees and employers to engage in whatever activities they could engage in before the Wagner Act came on the national scene.

CHAIRMAN WARNER: Mr. Brown has a word to say, too.

MR. BROWN: I think Mr. Iserman has dealt very well with the interstate aspect of that question, so I will address myself to the intrastate aspect of it. With one or two exceptions, the state right-to-work laws specifically guarantee the right to join a union. They differ from what some other states have in that they also guarantee the converse right, the right to refrain from joining a union.

MR. JOHN K. LAPHAM [Building Trades Worker]: I belong to a craft that has been unionized for seventy-five years, and I want to ask some questions. Has any of the speakers up on the platform ever worked in manual labor?

CHAIRMAN WARNER: Are you addressing that to the Chairman?

MR. LAPHAM: That's right. [Laughter] I want to ask this on the question of the union shop: Isn't it a fact that when they took a vote on the union shop, over 90 per cent of the workers voted for a union shop?

And isn't it a fact also that over 15,000,000 American workers are in trade unions?

I just mention that as one question. I have three other questions. [Laughter]

CHAIRMAN WARNER: To whom are you addressing the question?

MR. LAPHAM: To either Mr. Iserman or the other gentleman. And then I want to ask about Bar Association attorneys. They have some union!

CHAIRMAN WARNER: Mr. Iserman, it has been alleged that you have a union.

MR. ISERMAN: I do not have a union that fixes my wages, hours and working conditions, or that has any right to represent me in any capacity whatsoever. I am on my own.

MR. LAPHAM: You belong to the American Bar Association, don't you?

MR. ISERMAN: Yes, sir.

MR. LAPHAM: All right. You have a swell union! I wish I belonged to that. Another thing I would like to ask you is this: You hear so much about intimidation and coercion by labor unions. You, Mr. Iserman, surely must know about the LaFollette investigation in Ford. Where was the intimidation and coercion there? Wasn't it Bendix and his guerillas?

Now, we have three million people unemployed. Why don't you worry about them? Why don't you worry about the Negroes going to work, and why haven't you got a labor representative up there? You have only one side of the story.

CHAIRMAN WARNER: I think the question was merely a statement, not a question. It does not call for an answer. It will be recorded as Mr. Lapham's statement.

Are there any other questions?

MR. CHARLES COGEN: I would like to ask two questions, if I may. The first to Mr. Brown.

CHAIRMAN WARNER: In the future, I am going to ask you to state your questions one at a time, and wait for the answer in each case.

MR. COGEN: Mr. Brown has addressed himself to some very significant questions in regard to the results of the right-to-work laws, but I notice that the answers that he gives come entirely from the ranks of employers. I am wondering whether any attempt was made to find out what the unions thought of the results of these right-to-work laws.

I would like to add parenthetically at this point, if I may, that it does seem to me also, as a previous speaker has indicated, that it is a little improper or unwise to have a meeting of this kind at which the proceedings are so heavily weighted on the management's side.

Now, I would like to have Mr. Brown answer my question.

CHAIRMAN WARNER: The question is, has Mr. Brown any evidence from the trade-union side as to their reaction to the right-to-work laws?

MR. BROWN: Briefly, yes. The answer was not hard to find. The official position of the unions has been almost wholly in opposition to the right-to-work laws, and I so stated in my publications, if you will consult them. We have, however, in our experience in the legislatures with the right-to-work laws, found that many union workers, union members as distinguished from union officials, favor such laws and would support their enactment in other states. Some of them have even had the nerve to put themselves in writing to that effect.

MRS. HERRICK: May I add something?

CHAIRMAN WARNER: I am at this point going to take a question from the platform. Mrs. Herrick has indicated she wants to ask a question of Mr. Brown, and I am sure it will be interesting.

MRS. HERRICK: I want to ask Mr. Brown whether he was familiar with a very interesting study by Mr. Leo Wolman, Vice President of this august organization, which I saw in manuscript form. The report shows a definite leveling off of the membership in the trade unions. If I remember correctly, there are certain areas of this country where those figures showed an even more disturbing slowness to rise when you consider the extent of the protection that is given to the right to organize. Have you seen that study? I think it would add a great deal to the understanding of what actually happens.

CHAIRMAN WARNER: The question Mr. Brown is going to answer concerns leveling off of trade-union membership as indicated by Professor Wolman's study.

MR. BROWN: Mrs. Herrick, I have greatly admired a number of Dr. Wolman's reports. I am not sure that I am familiar with the particular one you refer to, so let me ask, was the point of your question that the growth in the South especially has leveled off? And by "leveling off" you mean it has not increased as fast as it did for a while, rather than that it necessarily has decreased?

MRS. HERRICK: I meant everywhere, and particularly in certain southern areas the plateau has come more quickly and more drastically. But the whole study showed a definite leveling off. Nothing has happened.

MR. BROWN: Of course, if it showed that for all areas, there would be factors other than the right-to-work involved.

MRS. HERRICK: I think there are.

MR. BROWN: I think it might be said as far as the South is concerned, in some states it may be a factor in the leveling off. I do not think it has caused great decrease except in specific cases where there are other factors such as the quality of the union leadership which may have contributed to withdrawal from the unions.

I think we have to face up to the question, Mrs. Herrick, at what price are you going to purchase great union growth? Is it, as you suggested it

should be, by persuading the worker of the value of union organization? I agree that for many workers in many places there is great value, just as I agree that all businessmen have a great interest in joining the Chamber of Commerce and Trade Associations. But I do think compulsory membership is not the answer to the problem. I think the price is violation of individual rights. And, as Mrs. Herrick pointed out, all rights have some qualifications. I think this is one aspect of an individual right that should not be qualified, and the price is too great.

Father Hogan: I am asking a question of Mrs. Herrick and/or Professor Chamberlain. Many writers have described the pressure exerted by individual workers in the absence of protection in older days when there were no unions at all. I wonder whether our speakers could inform us whether, if there were no pressures from organized labor, from unions, on the individual to join, there would be more or less pressure from the individual fellow workers, feeling that they had no recourse but to compel their fellow workers to stand together for the common cause, as they see it.

Chairman Warner: This is a question on the self-determination of the trade-union movement, as I understand it. It is directed toward Mr. Chamberlain and Mrs. Herrick. I will let them choose who will answer first.

Mrs. Herrick: Go ahead, Neil.

Professor Chamberlain: I think, unquestionably, active unionists in any shop would certainly bring pressure to bear upon the nonunionists to join the organization. I think this would be true whether or not the union enjoyed exclusive representation. I think that there does undoubtedly exist the feeling on the part of the active unionists that others in the shop should belong to the organization which supports the interests of all and brings benefits to all. So that I would be inclined to agree with what I would guess to be the implication of the questioner, that even though other devices might be suggested by which unions would gain additional security as counters to a union-security shop, there would still be continuing social pressure within the shop by individual workers, by unionist members on the nonunionists.

I do not think this is at all avoidable. I am not sure that there is anything that need be said against it. It seems to me that this is the kind of social pressure which is encountered in any type of social situation where the nonconformist always and necessarily accepts the pressures that come from a majority that conforms to a different persuasion. I myself would prefer that he be exempted from the stronger types of coercion in the affecting of his decision. I see no way, however, by which we can give him any protection—or any reason why we should necessarily try to give him any protection—from the social pressures that simply come from the expressions and beliefs of his fellow workers in the shop.

MRS. HERRICK: I will just say, "Me too!" [Laughter]

MR. AARON FISH [Personnel Manager]: I would like to ask a question of Mr. Brown.

Mr. Brown, your research indicated that in those states having right-to-work laws there was an indication of expansion of business. I would like to ask if you have similarly made a survey to find out whether or not the rate of growth of wages and fringe benefits, etc., had a similar growth in the right-to-work states. Have you made a comparison between the rate of growth of these benefits in those states and the rate of growth in those states not having the right-to-work laws?

MR. BROWN: The answer is, yes. Or, rather, I have compared the rate of growth in the right-to-work states with Missouri, a specific state that does not have the right-to-work laws, because that is a question we have been faced with.

I have found that in several of the right-to-work states this situation exists. I have a copy here if you want the exact statistics. But let me say that in several of the right-to-work states we have found that the rates of wage increase have been greater than in Missouri. And perhaps more significant from the broader economic viewpoint, we found that all save one of the right-to-work states had had much greater economic growth than Missouri on a proportional basis as indicated by retail sales and purchasing-power income.[1]

MR. BERNARD KABACK: As a schoolteacher in New York, I would like to ask Professor Chamberlain what he thinks of the right not to work. It seems to me that we have been given a certain second-class citizenship in this state when, failing in all professional means, we have just no other resources left to us because of the Condon-Wadlin statute.

CHAIRMAN WARNER: Mr. Chamberlain, the right not to work.

[1] Since the meeting, Mr. Brown has submitted Missouri State Chamber of Commerce *Research Report* No. 25, of March 18, 1954, entitled "The Relation Between State Right-to-Work Laws and Economic Growth". It is available from the Missouri State Chamber of Commerce upon request. He states: "I don't believe my reply adequately indicated that in November, 1953, official U. S. Bureau of Labor statistics revealed the average hourly earnings of production workers in manufacturing was greater in three of the thirteen right-to-work states than in Missouri and six of them showed a greater proportionate wage increase between 1949 and 1953 than did Missouri. Nor, did I make it clear that all of the then thirteen right-to-work states, except North Dakota, showed significant increases in per capita retail sales between 1949 and 1953, and in eleven of the remaining twelve states the percentage increase was greater than in Missouri. This report also shows a similar situation to prevail in regard to disposable income and increase in number of employees in nonagricultural establishments."—[Ed.]

PROFESSOR CHAMBERLAIN: I presume that the questioner is raising the matter of anti-strike legislation, and the question specifically would run in the form of whether particular groups of individuals—in this case teachers—should be denied the right to strike.

This is, as I am sure everyone realizes, a most complicated issue. I am afraid that I do not have any opinion or belief that is settled enough to be able to give any precise statement on the matter. In a more general way I would say this: I think that there are certain types of situations—whether teaching is one, I don't know—where the right to strike can be made subject to certain types of limitations in the interest of the public at large. However, in such situations I think that we must be extremely careful to make sure that those to whom we deny such rights have been given counterpart advantages, and these might come either through other forms of making their pressures felt on the public or on the school boards, or on their employers, or by seeing to it that they gain advantages equal to those which are gained in other areas.

CHAIRMAN WARNER: On that same question, Mrs. Herrick has indicated that she has some convictions. Mrs. Herrick.

MRS. HERRICK: I have followed a number of the strikes of public employees who under the Condon-Wadlin law in the state of New York are supposed to have no right to strike. No politician has ever had the guts to invoke the law. As for me, I am opposed to keeping on the books laws that are not being obeyed. Mind you, I never thought it was a good law, because, as Professor Chamberlain has just indicated, you cannot take away people's economic opportunities to better their position unless you give them some other way of doing it; as in England they did through the establishment of the Whitley Councils.

MR. CHARLES BELLIS: I am a member of the Academy. May I say, first, that I do not share some of the criticism of the former questioners as to the absence of a labor representative. I think the Academy has a perfect right to select whatever forum it decides and whatever speakers. I think certainly two of the speakers did substantial justice to the labor point of view.

I am talking as one who is sympathetic to labor's point of view. I refer particularly to Mr. Chamberlain and Mrs. Herrick. The other two speakers have biases; and as long as you know what their biases are you can accept what they have to say. And it is always interesting to hear the other side of the story.

I have a question to ask Mr. Iserman. My recollection, running back to the first enactment of the Wagner Act and the subsequent campaign to revoke it or to modify it, is that it was predicated, as I recall, largely on the argument or philosophy of management that this is a field where government should not interfere. This ought to be left to the whims and

destinies of the people who are affected. In other words, the less interference by the government, the better.

Why, then, at the first opportunity they had to modify the Wagner Act, did they write in this provision outlawing the closed shop when that properly could have been left to the parties—and I think they were pretty equally matched to fight it out—which would have taken care of Mrs. Herrick's suggestion that, in those industries where they had a number of years of union-shop experience, the parties could have gotten together. And where they didn't, they could have disagreed. Why did they then insist on having that provision written into law instead of leaving it to management and to labor to work out as they should in collective bargaining?

CHAIRMAN WARNER: Why is it not true that the closed-shop issue could have been successfully left to the parties to work out in their own ways?

MR. ISERMAN: I think what motivated Congress more than anything else in amending the Wagner Act by passing the Taft-Hartley Act and limiting the union shop was the belief that employers and unions have no right, by agreement between themselves, to limit the opportunity of people to get jobs and hold jobs to those who are members of unions. I think there is a large number of employers who have no feeling at all against the union shop or even the closed shop. But notwithstanding those employers, Congress made the law applicable across the board. And I think that the purpose was to protect the individual working man and not to protect employers.

MR. WALTER WEIS: I am a member of the society. I would like Mrs. Herrick to amplify a matter that she just touched on. In view of the great growth of unions and the power of union leaders, what is being done to train men for proper and adequate union leadership? Is that being confined only to a few unions? And if so, is it being at all effective?

CHAIRMAN WARNER: A very interesting question, Mrs. Herrick.

MRS. HERRICK: I know of a very large number of unions that regularly put on training institutes during certain times of the year best suited to their particular industry, and bring their people in for training. And there is an increasing number of young college men who are going into the trade-union movement as a career, having majored in economics, statistics, and what have you, or having been to the Cornell School of Industrial Relations. Also at many universities—Harvard, for example, and the University of Wisconsin—you have tremendous teaching programs specifically designed to teach union leaders. There are quite a few unions—I would hesitate if you asked me to name them offhand—which provide scholarships for some of their young people to go to these institutes to study the problems of trade unionism.

MR. FRANK HELLBRIDGE: I have a question directed to Mr. Chamberlain. In your discussion you proposed or at least suggested the use of the Rand formula in the United States. In proposing that, do you think that it could be confined to labor organizations? Or would it extend to all other organizations?

PROFESSOR CHAMBERLAIN: The only immediate application of it that I would see as relevant to the problem we are dealing with this morning would be its application to labor unions in which you have a situation where, by law, the union which is designated by the majority is charged with the representation of all employees in the unit; and where this places upon them a burden of expense which, it seems to me, might fairly be chargeable against all of the employees they represent, and not merely their members.

Perhaps I haven't grasped the purport of your question, but I don't know what organizations should be brought into or might be brought into this kind of arrangement.

MR. HELLBRIDGE: Well, aren't other organizations put to the same expense in their effort to do good, shall we say, throughout our American way of life?

PROFESSOR CHAMBERLAIN: But they are not specifically charged by law with such representation. In this case it would actually constitute an unfair labor practice which could be brought up before the Board if a union failed to discharge its responsibility.

MR. HELLBRIDGE: It is your proposal that the Rand formula would be set up as a matter of policy within the labor law?

PROFESSOR CHAMBERLAIN: It would seem to me there would be very good reason to consider it.

MR. HELLBRIDGE: Then couldn't that also apply to a political party?

PROFESSOR CHAMBERLAIN: I am not quite sure of the ground on which it would apply equally. Here again the political party is not charged or is not obliged by law to discharge any specific responsibilities to others within the society. There is no law which compels it to discharge certain functions to others.

CHAIRMAN WARNER: Mr. Hellbridge, Mr. Iserman would like to say something with reference to your question. Would you like to include him also?

MR. HELLBRIDGE: I would like to, yes.

MR. ISERMAN: I wish to comment, rather, on Professor Chamberlain's choice of words. He says that the labor organizations are "charged with responsibility by law." That is a responsibility that they are glad to have the law impose upon them, a responsibility that is more valuable to them than any other asset they have. I don't know why anyone should contribute to them against his will for their exercising a responsibility as

exclusive bargaining agents which they all want. and which has been responsible for their remarkable growth.

MR. MURRAY T. QUIGG: I am a member of the Academy. Mr. Iserman, I suppose that anyone is worthy of his hire. And if you take advantage of what he offers, you owe him something. In other words, the wage-earner, if the right to organize is a right—it cannot be made a duty —may accept the work done for him by the majority in arriving at a contract under which he can find work acceptable to himself. If he takes advantage he should make his contribution toward the cost of poli ing that contract and getting it. On the other hand, he should be entirely free at any time to protest, to seek some other type of organization to bring in there, to seek some other representation when opportunity affords. Otherwise, he is a peon and not a free citizen.

CHAIRMAN WARNER: I am not sure whether this is law or philosophy, but I think Mr. Iserman is equal to both. I will ask him to comment.

MR. ISERMAN: Mr. Quigg, you as a lawyer know that it isn't necessary for people to pay for services they do not want. And if a particular individual, though he is forced to accept "benefits" of a collective agreement, does not want the union to bargain for him or to represent him, and does not think those benefits are real benefits to him—he would rather have something else—I don't know why he should pay for the services that the law gives the union the right to render him against his will.

MR. QUIGG: I think if he accepts them, he should pay his share.

MR. ISERMAN: He is forced to accept them.

CHAIRMAN WARNER: The points of view have been stated. I would like to move on.

MISS FLORENCE KENNEDY [Attorney]: I would like to ask Mr. Iserman whether or not he sees an analogy between the exclusivistic practices and high entrance requirements of the professional organizations, and whether or not he anticipates in the future a concern on the part of society for a right to work in those professions.

CHAIRMAN WARNER: Mr. Iserman, your union qualifications are again being called into question.

MR. ISERMAN: I think that society fixes the standards for doctors, accountants, lawyers, and beauticians, to protect itself against people who do not know their business. I do not think there is any analogy between the union security, so called, or compulsory unionism, and the effort that society makes to protect itself against quacks and shysters and people of that sort.

CHAIRMAN WARNER: If I am not to lose my own standing in the union, I will have to bring the meeting to a close. I will take one more question. And Solomon-like, I will call on this gentleman.

MR. ALTHOUS: I am a member of the society. I want to ask a question of the chairman in sequence to some of the questions that have been asked by earlier members. Granting the right to work, why was no union labor member put on this panel?

CHAIRMAN WARNER: The chairman, with all the legal support he has behind him, feels relatively secure in defending himself. His answer is, he had nothing to do with choosing the panel.

I wish to thank all of you. Your participation has been magnificent. Thank you very much!

[Note from the Academy: The practice of the Academy is to afford the opportunity for the statement of conflicting views on important questions of public policy. Of the four papers presented this morning, two defended compulsory union membership in several of its various forms and two considered compulsory membership to be against sound public policy.]

PART II

THE RIGHT TO WORK

INTRODUCTION

THE HONORABLE LEWIS W. DOUGLAS, *Presiding*
Former Ambassador to Great Britain
President, Academy of Political Science

MEMBERS of the Academy and Guests: I welcome you all to this semi-annual meeting. I know that time is on the wing and that you have come to hear Mr. Gurley, but there are one or two things that I think it would be appropriate for us to attend to before he speaks.

Dr. Samuel McCune Lindsay has been ill—he is the oldest trustee of the Academy. With your permission, or rather in the absence of dissent, I would like to send him this telegram:

> The officers and members of the Academy
> rejoice to learn of your recovery from
> your recent serious illness, and join in
> sending you their best wishes for many
> more years of helpful service to your
> fellow men. [Applause]

This session of the Academy has been devoted to a highly controversial subject, "The Right to Work", and in the name of the Academy I should like to thank those who this morning so ably presented the various views that are associated with this issue.

One of the characteristics of American economic and political society that distinguishes it from all others is an ancient distrust of the accumulation and exercise of too much power by any

group. This is a thread of philosophical thought that has come down to the present day through the many generations of Americans, from the very early days of the Colonies. This explains why there are so many who are still loyal to the idea of states' rights. And this is why there are so many who still deeply believe that the best defense against the abuse of power is the dispersion of power.

There are examples of this response of the American people to the exercise of authority. Whenever any group has, in the minds of the American people, accumulated too much power, they have always induced the Congress to intervene with restraining legislation. This is why there are the anti-trust laws. This is why there are the statutes that regulate and restrain the exercise of private power in connection with the issue of securities. This is why there are statutes that impose restrictions upon the powers of banking institutions.

Whenever in an economic sense any group has achieved so much power that the American people have feared that that group could interfere with and frustrate the relative freedom of the market place, they have induced the Congress to pass legislation, to enact laws aimed at preserving at least some degree of fairness within this institution about which, unhappily, we know too little.

Now, this issue that we have met today to discuss is an exceedingly important one. It embraces a whole variety of ancient issues. Implicit in it is the right of a man to work without being required to join an organization as a condition of employment; the right of a man to join any organization of his free choice; the right of a man to express his views, whether he be employer or employee; the right of a man to strike, subject to certain restraints that are associated with industries necessary to the national defense, and subject to a preservation of the rights of those who do not choose to strike. There is a whole variety of issues of that sort that are ancient. They are what we call a part of the rights of the American citizen, and these are some of the implicit questions in the issue which we have met to discuss today.

But, in addition to these rights and these issues, there is another; and that is the question whether or not any group has acquired so much power that it is capable of coercing govern-

ment itself. So the issue is not a parochial and narrow one of employer-employee relations. The issue is not a narrow one of just a trade-union movement. The issue penetrates to the very heart of the whole American philosophy of the organization of society.

Recently the question of the union shop, in which most of these basic issues are implicit, has been for the first time brought into a naked form before the courts of the land, and, happily for us, Mr. Gurley, the President of the Santa Fe, is with us today to speak on this issue.

Mr. Gurley commenced life a few years before I did, which is to his advantage. He commenced as a clerk in the Burlington Railroad. He rose by the power of his own talents through the ranks of the railroad industry to as high a position as a person can reach within that industry. But he is much more than that. He is a director of industrial and banking institutions. He is a trustee of academic organizations and educational institutions. He is a pillar of society. But above all, he had the vision to perceive the fundamental nature of the issue with which he had to deal, and he had the courage to take a position. It is with an extraordinary amount of pleasure that I introduce to you Mr. Gurley, the President of the Santa Fe Railroad and the Chairman of its Executive Committee. [Applause]

UNALIENABLE RIGHTS VERSUS UNION SHOP

FRED G. GURLEY
President, Atchison, Topeka and Santa Fe Railway System

TUESDAY of last week was the 211th Anniversary of the birth of Thomas Jefferson, the author of our Declaration of Independence. This Declaration announced a political philosophy which, while it had its antecedents in England and the European Continent and even in the ancient world, nevertheless in many ways represented a new departure. The signers were bold and courageous men, and in support of their declaration they mutually pledged to each other their lives, their fortunes, and their sacred honor.

It is appropriate, therefore, to pay tribute to Jefferson, and to those others who signed the Declaration, and to record the fact, significant in its bearing upon the subject which has been under discussion at this meeting, that the very first pronouncement after the opening paragraph of the Declaration begins with this stirring justification of the momentous step the Colonies were taking:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

This affirmation of the unalienable rights of man found implementation in the Constitution of the United States as well as in the Amendments known as the Bill of Rights, which were adopted in 1791 in no small part at the insistence of Jefferson. It is found in many places in the Bill of Rights, including the Fifth Amendment with its provision that no person shall be deprived of life, liberty or property without due process of law, and the Ninth Amendment with its provision that "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Time and again the Supreme Court of the United States has said that these rights and these liberties include the right to

engage in any of the common occupations of life without the imposition of unreasonable or burdensome restrictions.

Since 1776 the world has been catching up with Jefferson and the other founding fathers of America even though the pace has not been as fast or as steady or as uninterrupted as we might desire and even though it would take an optimist, indeed, to say that anything like the full measure of their objectives has been universally attained. In 1948 the General Assembly of the United Nations adopted a Universal Declaration of Human Rights which not only set forth the substance of what I have quoted from the Declaration of Independence, but which went on to add something more specific in its bearing on the subject which we are discussing today. Article XX of the Universal Declaration reads as follows:

"1. Everyone has the right to freedom of peaceful assembly and association.

"2. No one may be compelled to belong to an association."

I believe that I was invited to speak to you today because the Santa Fe Railroad is engaged in a law suit in Texas which involves this freedom from being compelled to belong to an association. This suit is to prevent the railroad from being forced by the nonoperating railroad unions to sign a "union-shop" contract. Such an agreement would require the railroad to serve notice on all present employees who are not union members that they must join the union representing their craft within 60 days or be fired from their jobs. The agreement would require that new employees join the union within the 60-day period.

It is clear that the proposed agreement contemplates we would use the power of an employer to deprive individual men and women of a freedom which is theirs as an unalienable right. We are asked to fire people for exercising their rights: a right to pursue happiness—a right to get the means of sustaining life—a right of property—a right to work. It is a freedom of individual men and women which we cannot bargain away. It is not our right to bargain it away.

This union-shop agreement was proposed under an amendment passed in 1951 to the Railway Labor Act, sanctioning a union shop under certain conditions. Under the amendment, the union shop was sanctioned, any other law, state or federal, to the contrary notwithstanding. In this respect it is unlike

the Taft-Hartley Act which does not permit a union shop in the sixteen states where right-to-work laws are in effect banning any arrangement whereby membership or nonmembership in a labor union is made a condition of employment. Years ago there was some compulsory unionism—quite a small percentage—in the railroad industry with respect both to so-called standard unions and to company unions. In 1934, however, every form of compulsory unionism was outlawed in the revised Railway Labor Act passed in that year. The purpose of the 1951 amendment, advocated by most of the unions and solidly opposed by management, was to remove this ban.

The Santa Fe has several thousand nonunion employees who, for reasons good or bad or indifferent, but at least satisfactory to them, do not want to belong to a labor organization.

When the unions pressed their demands for a union-shop agreement under the 1951 amendment, a class action was instituted as a test suit by thirteen Santa Fe employees at Amarillo, Texas, against both the unions and the railroad. Santa Fe subsequently aligned itself with its employees and against the unions. In the first stage of what may be a very protracted proceeding, the District Court at Amarillo found that the proposed union-shop agreement would deprive the individual employees and the Santa Fe of rights guaranteed to them under the Constitution. The court granted a permanent injunction enjoining the signing of a union-shop agreement. Also, the order of the court restrains the union from demanding such agreement through use of a strike or through other economic sanctions.

One of the witnesses who testified at Amarillo was a young man who had been discharged by another railroad. This young man had been a member of the appropriate labor organization. The time came when unfortunately both his wife and his child became ill. He encountered unusual expenses which caused him to be in debt and he became delinquent in his dues to the labor organization. When he became delinquent in his dues he was no longer in good standing and, under the agreement between the labor organization and the railroad in question, he was discharged. Of course this did not help him pay his debts, nor did it help him or his family in the pursuit of happiness.

Now, I do not propose to talk too much today about this specific case at Amarillo. It is an important case because it

raises a question that has never, so far as I have been able to learn, been squarely presented to or decided by the Supreme Court of the United States, namely, whether compulsory union membership is compatible with the fundamental liberties guaranteed by the Bill of Rights.

There have been state court decisions, some one way, some another, but none by the Supreme Court of the United States. What is important is the principle of liberty that so thoroughly permeates the Amarillo case. The very fundamental liberty which is involved is the right to work without complying, as a condition of employment, with any requirement of membership or nonmembership in a labor union.

We are not opposed to unions on the Santa Fe. We have recognized railroad unions beginning in the 1880's, and we think that they have a useful and legitimate place among American institutions. These railroad labor unions are among the very best of the labor organizations in the country. I know most of their executives, and they are good people. I have no quarrel with them personally. I have no quarrel with the manner in which the labor organizations have carried on. My difference with them relates to a question of principle on a specific issue.

We are resisting the demands for a union shop because we think they are contrary to the principles under which this country was founded, because we do not wish to be a party to depriving our employees of their rights, and because we believe that the subjugation of the individual is contrary to the best interest of all concerned. We think that yielding to the demands would work injury, tangible and intangible, to the company and to the employees, both those who are presently union members and those who are not.

It is an obvious infringement on the liberty of a man to force him against his will to belong to any private organization. This is scarcely denied, but an attempt is made to justify the deprivation of liberty in the case of a labor union on a number of special grounds.

In the first place, the principle of majority rule is invoked. It is said that if the majority of employees unite in organizing a union, on democratic principles their decision is binding on all. But this is no more true in a labor union than in any other type of private association.

There is nothing absolute about the principle of majority rule. It is not unlimited. Under free institutions the majority may not encroach upon the fundamental liberties of the minority. The very purpose of our Constitution and of the Bill of Rights is the protection of minorities. Tyranny and oppression are as bad at the hands of a majority as at the hands of George III or a dictator heading a modern police state.

There is reason for believing that in America today the danger to liberty from outside our borders is not the only one we face. There is also the inside danger which has its origin in the impulses and emotions which impel the crowd to infringe on individual rights.

Compulsory union membership is also supported by an appeal to the equitable theory that, since the union confers benefits on all employees by acting as their collective bargaining representative and otherwise, each of them should be compelled to bear a share of the burden of supporting the organization.

Those who stay out, it is said, are free riders who get unjust enrichment at the expense of the members. Drawing an analogy between union dues and taxes, those who take this view say that democratic principles require nonunion men to contribute financial support to the union which represents them. They go so far as expressly to classify union dues as taxes.

These reasons no more support compulsory membership in a labor union than in any other type of association. Even if the premises of the free-rider argument were fully valid, they would not justify the conclusions drawn from them. They would mean only that every employee should be required to pay to the union a fair share of its expenses of operation. They would not mean that the employee should, in addition to that, be required against his will to join an organization and subject himself to its government and discipline.

The payment of dues to the union cannot properly be likened to taxes. Taxation is a sovereign power and may be exercised by the government alone. There is not the slightest basis for the levying of taxes by a labor union or by any other private association.

Every chamber of commerce, every board of trade, every trade association, every taxpayers' league, many fraternal organizations, and many service clubs provide benefits for a

group of persons. Quite a few people think one political party or the other provides inestimable benefits to all of the people of the country. Yet would that justify making membership compulsory in these associations, including the political parties?

The theory of the free-rider argument is that when an organization is protective or promotive of the interests of a class or group, every member of that class or group should be compelled to join and support the organization. This idea is opposed to the fundamental theory of private organization. A group of people associate to advance their common interests. They try to persuade as many others as they can to join with them, but since the undertaking is wholly private and voluntary they can use nothing but persuasion to obtain or retain members. According to the compulsory-union-membership theory, however, whenever an organization becomes representative of a large number of persons having a common interest, everyone having the same interest should be compelled to join the organization.

For the sake of testing the free-rider theory, let us look for a moment at the benefit bestowed upon workers as a class by the investors who raise the capital to build the plant and furnish the management whereby workers are given employment. Suppose a law were passed providing that management could require as a condition of employment that all employees must belong to an industry protective association, formed to advance the welfare of the industry as a whole. A strong argument could be made that the corporate employer, by financing, organizing and managing the business, is providing the opportunity for employment which is so vital to the employees, furnishing them as it does with the means of earning a livelihood. It could be argued that the employer not only is investing money and taking risks for the benefit of the employees or the corporation, but is supporting the industrial association to look out for the welfare of all of those engaged in the industry, and, therefore, the employees should not be free riders in the organization which likewise functions for their benefit. One could argue that they should be compelled to join the association, to pay their dues, and to submit to the charter, by-laws and rules governing the other members of the industry association, which some might argue confers greater material benefits on employees than any labor organization. Despite the apparent

absurdity of this illustration, it has fully as much logic as the case for compulsory unionism.

The nonunion man in a craft represented by a union has no choice but to accept the wages, hours and working conditions negotiated by the union. His right to negotiate with the employer on these subjects has been taken away from him and vested in the union. He may strenuously object to union representation. But there is nothing he can do but accept it. The truth of the matter is that he is a forced follower, not a free rider.

The right to represent all employees instead of merely the union members is not a burden that has been forced on the unions; it is a right and a privilege that they have sought and that they highly prize. About the last thing in the world the union leaders would want is to have the nonunion men they represent free to bargain for themselves. The right of a union to bargain for all employees is something whose value to the union far exceeds any burden which it may entail.

The benefits that the employees get from a union can be overestimated just as they can be underestimated. No informed person would suppose, for instance, that the increases in wages in this country between 1939 and 1954 came about altogether by virtue of union activity. It should not be overlooked that some union policies benefit employees unequally. Some are greatly helped, others are aided moderately, while still others suffer a detriment, as, for instance, where a large increase in wages raises costs and prices and curtails sales and employment.

The final ground that is urged for supporting compulsory union membership is that it is necessary for union security. Labor leaders have frequently placed their demands for security on the basis of need. They have said in effect: "We must have the closed or union shop to guarantee our existence and thereby insure protection of the gains of organized labor." Where this idea has been accepted, the acceptance has generally been uncritical and without question. But now that the union-shop form of compulsory union membership has spread beyond mere local situations, it is time to evaluate the theory of the need for the union shop as essential to the survival of the union, or to its prosperity and well-being, or to its successful operation.

It is time to test it and reappraise its rôle as an instrument of union security.

Modern labor organizations are in a position very different from their forerunners of three or four decades ago. It is not too much to say that the laws have been revolutionized in their favor. Employees have been given the right to organize and the right to bargain collectively. The correlative duty has been imposed on the employer to bargain with the union. The employer has been forbidden to interfere with the right of self-organization. A long list of practices to which unions have objected have been outlawed. The union as a collective bargaining agent has been given the right to represent all employees so that the union so selected is the bargaining agent for all employees, union and nonunion alike. This provision takes away from the individual nonunion employee the right to bargain for himself in the matter of wages, hours and working conditions, and places it in the hands of the union holding the right of representation. Thus, from the organization of the union to the execution and enforcement of a collective bargaining contract, labor has secured the all-powerful helping hand of government. It is something of an understatement to say that labor is no longer the underdog in industrial relations.

Fortunately, the yardstick of ample experience in the railroad industry is at hand to test the validity of the assumption that the need for compulsory union membership continues under modern conditions. From 1934 to 1951, the Railway Labor Act specifically forbade closed- or union-shop contracts in the railroad industry. If the old assumptions about need were sound, one would expect to find that railroad labor organizations fared rather badly in that seventeen-year period. We all know, at least in a general way, that railroad labor unions have made considerable progress in recent years, and have enjoyed marked success. But we need not speculate—let us see what the record shows.

It is interesting indeed to examine membership figures of the three largest nonoperating railroad unions during the period when the union shop was forbidden by legislation. They show a threefold gain during this very time.

In 1935 there were about 72,500 members of the Brotherhood of Railway Clerks. By 1952 this figure had grown to at least

250,000, and perhaps as high as 350,000. The Brotherhood of Maintenance of Way Employees in 1935 numbered about 33,500. In 1952 this figure was at least 158,600 and possibly as high as 171,400. The Brotherhood of Railway Carmen also enjoyed an extensive expansion. In 1935 its membership was about 55,000 and by 1952 it was between 114,600 and 145,500. The other rail unions expanded in a comparable fashion during the same period. These figures I have used are fair approximations based on reliable sources. They are not exact because the unions themselves are the only source of precise information and they are loath to furnish such figures.

Membership is not the only area in which these unions have enjoyed outstanding success. By 1952 each had collective bargaining contracts covering substantially all—between 94 per cent and 99 per cent—of the railroad mileage in the country.

Figures are not available to the same extent as to the gain during this period in the financial resources of these labor organizations. However, enough information is available to enable us to say with a moral certainty that railroad union finances improved greatly in the years 1934–1951.

Let me repeat—and we must not lose sight of the fact—that this expansion and growth took place during a period when it was a criminal offense to have a closed or union shop on an American railroad. Where, then, is the need for contract guarantees of union security of the sort found in a union-shop agreement? The answer, plainly and simply, is there is no such need.

This experience in the railroad industry does not stand alone. It has its parallel in the growth in the ranks of organized labor in industry after industry without the coercive influence of the union shop or any other form of compulsory union membership.

What has been true in the United States has likewise been true abroad, in England, on the continent of Europe, and in Australia. Unions have grown and prospered as voluntary associations without the aid of compulsory membership. I do not mean to say that the union shop or some other variant of compulsory unionism has been wholly absent in those countries because it has not; but it is by no means universal, and in the free world it is still being not only opposed by employers but disdained by important segments of workingmen who prefer to keep their associations on a voluntary basis and who reject the loss of individual liberty inherent in compulsory membership.

The labor union, we may therefore assume, may be strong and effective without resort to coercion and compulsion to fill its ranks. Labor leaders know that. Indeed, the principal spokesman for railroad labor candidly said so when he asked Congress to lift the ban on the union shop in the Railway Labor Act. He placed the desire for the union shop on the desirability of giving the organization more power of discipline over the whole group of employees, including those presently in the unions as well as those outside of the ranks. He wanted power, he said, to enforce the policies of the unions. The added power of discipline would no doubt be a convenient instrument to the labor leader in many situations.

But here we have another illustration that one man's accession of power is another man's loss of liberty, human dignity and self-respect. The workman who is coerced into joining a private association against his will can no longer look the world in the eye with the same assurance of being a free American citizen. He has in fact become subject to discipline, to being pushed around. In the railroad industry he may be discharged only for failure to pay the initiation fees, dues and assessments, but he is, nevertheless, subject to every other form of union discipline and upon pain of that discipline he must abide by the charter and by-laws, the rules and regulations of the union.

Often as a union man he is expected to contribute to an associated political organization, and otherwise toe the line politically. Not uncommonly he is forbidden to advocate any legislation inimical to the organization which in practice not infrequently turns out to mean what is disapproved by the leadership. This means an assertion of control by the union over many matters without direct bearing on the union's rôle of collective bargaining representative, and as to which the leaders assume to know better than the individual himself what is good and what is bad for him.

However appropriate this might be where membership in the union is on a voluntary basis, it becomes intolerable when it applies to one who is forced into the organization against his will. It is bad enough to force a man into a good union. But what about forcing fine American citizens into a union dominated by Communists, or one dominated by racketeers? That is being done in this country today, and the doing of it is being

facilitated by the laws and the institutions erected during the 30's and 40's in this country. The C.I.O. has expelled a number of large and important unions because of Communist domination, but that has not ended their power or the power of other Communist-dominated unions under union-shop agreements to force workers into their ranks.

Here in New York public attention has been focused in the past few years on unions controlled by racketeers and criminals on the waterfront, and in the building industries where honest men because of union-shop agreements had to bow the knee to these criminals and racketeers to earn their daily bread.

These conditions point up the comment made by President Roosevelt in 1941, that under his leadership the government would never compel nonmembers to join a union by government decree. "That", he said, "would be too much like the Hitler methods toward labor." The method is essentially the same wherever coercion is employed, whether it be coercion of the unions or the employer or government, or some combination of them. And let it not be forgotten that coercion is inherently wrong whether the union be good or bad.

Some labor leaders know that this coercion is not in the best interest of anyone, not even of the unions themselves. Those labor leaders who, like the present heads of the Brotherhood of Locomotive Engineers, prefer the voluntary form of association are following a sounder policy even when judged from the standpoint of union self-interest. Undoubtedly things are made easier for union leadership when it no longer becomes necessary to solicit members or to worry about the collection of dues. Quite true, the added power in disciplining members, and in dealing with employers, with the public, and with the government, must look attractive. But are all these features unmixed blessings? I do not think so. Every one of them has produced and everyone of them inevitably will continue to produce a reaction. The coerced conscript follower cannot be of the same value to the organization as the convinced adherent who joins of his own free will.

A change takes place in the relationship between the official and the rank and file in the sense that close communion is diminished and mutual understanding deteriorates. The member no longer has the right to show his dissatisfaction by leaving the

organization—a privilege not infrequently availed of in a free type of organization and one highly prized by many men. Theoretically the dissatisfied member has his remedy by the election of a new slate of officers or even by voting for a change in the collective bargaining agency. Actually these remedies are not often invoked because they are enormously difficult to use.

From the standpoint of the union, one of the chief drawbacks to compulsory membership lies around the corner. Presently the status of the union is that of a voluntary private association, treated by the law as such. As it loses its voluntary character, as membership becomes compulsory and universal, can it be expected to continue to be treated as a voluntary organization? Isn't this unlikely in the long run?

A union, membership in which is compulsory, and particularly a union, membership in which is a condition precedent to holding a job in one of the major nation-wide industries of the United States, is a likely target for progressively stricter governmental regulation.

In a free country, free unions are more in keeping with other institutions as well as more conformable to the liberties of the people, and they no longer can remain free if they follow the policy of coercing and compelling membership.

The problem is challenging to every citizen of the United States. If we sit by complacently and watch the rights of others being whittled away, we are tolerating an undermining of our freedoms which threatens the entire structure of our democratic way of life. All of us have a responsibility to see that this does not happen. If the liberties of employees are sacrificed to those who seek unwarranted power over them, the inevitable consequence will be to jeopardize the liberty of every man, woman and child in the United States. The responsibility for the protection of these liberties must not be shirked. All of us must remember that liberty may be preserved in this country only by eternal vigilance, and that we must resist every encroachment. Thank you, very much! [Applause]

Remarks by the Chairman

President Douglas: Mr. Gurley, if liberty is a means to an end, it is no less the highest goal, the most precious goal, of society. Many issues affect the preservation of liberty in American society. There are these national issues, there are the internal fiscal issues, but I venture to say that no issue is more relevant to the preservation of liberty among ourselves than the issue which has been discussed today and which Mr. Gurley has so very tellingly and persuasively laid before us.

We are very grateful to you, sir, for coming, for taking this time from your busy life. We particularly appreciate the calm and the quiet but the telling way in which you have defined these issues.

We stand adjourned.

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